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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I, the transfer of ARM 17.36.309, 17.36.312, 17.36.313, the amendment and transfer of ARM 17.36.314, 17.36.326, 17.36.328, 17.36.345, the amendment of ARM 17.36.101, 17.36.102, 17.36.103, 17.36.104. 17.36.106, 17.36.108, 17.36.112, 17.36.116, 17.36.310, 17.36.320, 17.36.322, 17.36.323, 17.36.327, 17.36.340, 17.36.914, and 17.38.101 and the repeal of ARM 17.36.330, 17.36.331, 17.36.332, 17.36.333, 17.36.334, 17.36.335, 17.36.336 pertaining to the review of storm water designs, individual, and shared onsite wastewater systems, and well locations, including the reorganization of existing rules. In addition, the adoption of Circular DEQ-20, the amendment of Circular DEQ-3 and Circular DEQ-4, and the repeal of DEQ-11 and Circular DEQ-17	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, TRANSFER, TRANSFER AND AMENDMENT, AMENDMENT, AND REPEAL (SUBDIVISIONS)

TO: All Concerned Persons

1. On January 23, 2023, at 10:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption, transfer, transfer and amendment, amendment, and repeal of the above-stated rules.

The department is committed to preventing the spread of COVID-19 and promoting the health and wellness of others. Members of the public may participate either in-person or virtually. For in-person meetings, while face masks are not required, meeting attendees are welcome to wear masks. If you are not feeling well, please do not attend the in-person meeting. Registration with Zoom may be made at the following link:

https://mt-gov.zoom.us/j/87099209117?pwd=MERvamJMZlB4TGNKemNnNXUrRVA5Zz09

Passcode: 195684

Description: MAR 17-421 - Subdivision Rulemaking

Or One tap mobile:

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Passcode: 195684

SIP: 87099209117@zoomcrc.com
Passcode: 195684

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department, no later than 5:00 p.m., January 17, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at: P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQSubDivRuleUpdate@mt.gov.

3. GENERAL REASON STATEMENT

In this notice of proposed rulemaking, the department proposes an extensive reorganization with a few significant modifications to the department's subdivision rules for water, wastewater, storm water, and solid waste facilities. Throughout this notice, the department proposes to remove duplicative requirements, to reorganize existing requirements to make them more clear and intuitive to use, and to remove requirements that fail to protect the environment or further the purposes of the Sanitation in Subdivisions Act.

A considerable number of the proposed changes involve transferring and consolidating existing requirements. The department's existing rules are separated by the type of facility under review and contain both procedural requirements and design standards. As discussed with more specificity below, the department proposes to transfer all non-public water design standards to a single department circular and to consolidate related procedural requirements into simplified rules. In most instances, the proposed reorganization does not involve substantive changes. Unless otherwise noted in this notice, the department proposes to maintain existing requirements for the same reasons those rules were initially adopted, and the department incorporates those previous statements of reasonable necessity.

Among the more significant substantive procedural changes are the proposed changes to ARM 17.36.112, which would remove unnecessary re-review of

previously approved facilities in new subdivisions and would make it easier for a person to make minor changes to their certificate of subdivision approval through the use of a revised lot layout or an approval from the local reviewing authority.

Also significant are the proposed changes to the requirements for professional engineers for storm water designs in ARM 17.36.310. These changes would eliminate the requirement for a professional engineer for all lots, regardless of use, with less than 25 percent impervious area; would remove the expiration date of approved plans and align the need for certifications and as-builts with real-world development schedules; and provide an exemption for storm water design for lots over 5 acres in size with less than 5 percent impervious area in certain circumstances.

In ARM 17.36.320, the department proposes a significant change to the level of design detail that must be submitted to the reviewing authority at the time of subdivision review for septic systems. These changes would not change the requirements for such systems. Rather, the department recognizes that certain design details are better reviewed by local health departments at the time of septic permitting rather than at the time of state subdivision review. The proposed changes would still require submittal of all necessary information for the department to evaluate setbacks and nondegradation, but would allow more flexibility for septic installation.

As part of the department's overall reorganization, the department proposes to remove design requirements for multiple-user water systems from Circular DEQ-3 and to consolidate all design requirements for individual, shared, and multiple-user water systems in new Circular DEQ-20. This new circular would also incorporate and consolidate the requirements currently in Circular DEQ-11, concerning springs, and those in Circular DEQ-17, concerning cisterns. The department proposes one change to Circular DEQ-4 to align with the proposed changes to ARM 17.36.320. Other changes to DEQ-4 are outside the scope of this rulemaking. The department plans to revisit DEQ-4 in the future with Phase II of its comprehensive review of subdivision rules, but no other changes are proposed in this notice.

These and other substantive changes are discussed in more detail below. The department also proposes some stylistic changes to the existing requirements. These stylistic changes (including, for example, new numbered lists, simplified language, changes in confusing terminology, etc.) are proposed to make the requirements easier to understand and administer.

4. The rule proposed to be adopted is as follows:

NEW RULE I WATER SYSTEMS (1) Plans for proposed subdivision facilities that include public water supply systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1.

(2) Non-Public Water Systems must comply with Circular DEQ-20.

(3) Systems requiring design by a professional engineer per DEQ-20 or ARM 17.38.101 are subject to the requirements of ARM 17.36.121.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: NEW RULE I is a proposed signpost rule that would direct applicants to the relevant requirements for public water systems, nonpublic water systems, and those systems requiring design by a professional engineer. Section (1) of the proposed rule is currently in ARM 17.36.333(2) and would be transferred without substantive change. Section (2) of the proposed rule reflects the proposed addition of Circular DEQ-20, discussed elsewhere in this notice of proposed rulemaking. The professional engineer requirements of (3) are currently adopted in ARM 17.36.333(1)(b)(i) and would be transferred with updated cross-references.

5. The rules proposed to be transferred provide as follows:

17.36.309 (17.36.120) SOLID WASTES

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to transfer current ARM 17.36.309 to ARM 17.36.120 for the reasons stated in the General Reason Statement.

17.36.312 (17.36.124) SUBDIVISIONS ADJACENT TO STATE WATERS

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes transferring ARM 17.36.312 to ARM 17.36.124 for the reasons discussed above in the General Reason Statement.

17.36.313 (17.36.125) CONDOMINIUM CONVERSIONS

AUTH: 76-4-104, MCA
IMP: 76-4-111, 76-4-125, MCA

REASON: The department proposes transferring ARM 17.36.313 to ARM 17.36.125 for the reasons discussed above in the General Reason Statement.

6. The rules proposed to be amended and transferred provide as follows, stricken matter interlined, new matter underlined:

17.36.314 (17.36.121) REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS (1) The requirements in this rule apply to systems for which plans and specifications must be submitted to the department by a professional engineer under ARM 17.36.310(2)~~(a)~~, ARM 17.36.320(2), or ~~ARM 17.36.333(1)(b)(i)~~ [NEW RULE I(1) and (2)].

(2) through (5) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, ~~76-4-125,~~ MCA

REASON: The department proposes to move the existing requirements regarding professional engineers that are currently in ARM 17.36.314 to ARM 17.36.121 to streamline the administrative rules and make them easier to use. The proposed changes would update the cross-references and correct the implementing statute reference, but the rule would remain substantively unchanged.

17.36.326 (17.36.122) ~~SEWAGE SYSTEMS:~~ OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS ~~(1) The applicant shall demonstrate that all public and multiple-user sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.~~

~~(2)~~(1) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

~~(3)~~(2) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(3) When required by department circulars or this chapter, an operation and maintenance manual must be provided for water supply, wastewater treatment, and storm water facilities meeting the requirements of that circular or rule.

(4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with ~~76-4-104(6)(i), MCA~~(6). Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:

(a) in writing signed by the grantor of the easement that adequately describes what is being conveyed, contains language of conveyance, and identifies the grantor and grantee of the easement; or

(b) remains the same.

(5) If an application includes a shared or multiple-user ~~sewage~~ system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

(6) Proposed drainfield mixing zones and proposed well isolation zones, as those terms are defined in 76-4-102, MCA, must be wholly within the boundaries of a lot as provided in this section. This rule applies to all subdivisions subject to review under Title 76, chapter 4, MCA, including new subdivision applications, subdivision rewrites, revised lot layouts, and minor deviations, except as provided in (c). For purposes of this rule, a setback envelope or provisional mixing zone is equivalent to a drainfield mixing zone.

(a) For lots created after March 30, 2011, a proposed drainfield mixing zone must be located wholly within the boundaries of the lot unless:

(i) the adjoining land is owned by the same person;

(ii) an easement has been obtained for the mixing zone from the affected landowner;

(iii) for public land, appropriate authorization has been obtained from the public entity; or

(iv) the mixing zone extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(b) For lots created after October 1, 2013, a proposed well isolation zone must be located wholly within the boundaries of the lot unless:

(i) the adjoining land is owned by the same person;

(ii) an easement has been obtained for the well isolation zone from the affected landowner;

(iii) for public land, appropriate authorization has been obtained from the public entity; or

(iv) for individual wells only, the well is located a minimum of 50 feet inside the lot boundary and extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(c) This rule does not apply to the following:

(i) divisions provided for in 76-3-207, MCA, except for family transfers under 76-3-207(1)(b), MCA;

(ii) lots created before October 1, 2021, and excluded from review pursuant to 76-4-125, MCA; or

(iii) changes to an existing well isolation zone or mixing zone that was previously approved under Title 76, chapter 4, MCA, if the changes would not increase the size, location, or boundaries of the existing isolation or mixing zone.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: In (1) through (5), the department proposes a reorganization and slight rewording of existing requirements related to ownership, operation and maintenance, and user agreements. In (4)(a), the department proposes additional language about the contents of a written easement. This is not substantively new but responds to questions from applicants regarding acceptable easement forms.

Section (6) would clarify the requirements of 76-4-104(6)(i), MCA, concerning proposed well isolation and drainfield mixing zones. These requirements would be consistent with current agency procedures and interpretations but are necessary to provide regulatory transparency and consistency. Under this section, a proposed isolation or mixing zone would be required to remain wholly within the boundaries of a lot unless the adjoining land impacted by the isolation or mixing zone is owned by the same person or if an easement has been obtained from the adjoining landowner. Under this rule, an applicant could allow isolation and mixing zones to cross internal lot lines of the proposed subdivision but could not impact adjacent landowners by allowing an isolation zone or mixing zone to cross external lot lines without an easement from the affected adjacent landowner. This same logic applies

once the lots have sold and are owned by different lot owners: even though the lots were originally owned by a single property owner, any new isolation or mixing zones that cross internal property boundaries would impact the adjacent landowner.

This section would also differentiate between lots based on the date the lot was created. The statutory provisions implemented by this rule apply only to "proposed subdivisions"—that is, subdivisions created after the effective date of the statute, and it is necessary to indicate which lots are subject to which requirements. In some instances, application of this rule might lead to impacts to adjoining landowners. For instance, a subdivision lot that was created before 2011 might add a second home with a second mixing zone that crosses onto adjoining property. Based on the existing statutory language, however, consideration of this issue must be addressed by the Legislature.

Proposed (6)(c) would consolidate the various statutory exemptions in one place, with wording improvements to make the exemptions easier to understand. In (6)(c)(iii), the department proposes to specifically exempt changes to previously approved isolation or mixing zones if the changes do not increase the size, location, or boundaries of the existing isolation or mixing zone. Such changes might include, for example, a change from an individual well to a shared well, or an increase in the approved flow of a drainfield. In such cases, no new impacts to the adjacent landowner would occur.

17.36.328 (17.36.123) CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS (1) New water supply and sewage disposal facilities in ~~a proposed~~ subdivision must be provided by a connection to a public water supply or public wastewater system if any boundary of the subdivision is within ~~500~~ 300 feet of any component of the public system ~~and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements cannot be obtained. For purposes of this rule, a connection is economically practical if the cost of constructing the connection to the system is less than or equal to three times the cost of constructing approvable systems on the site.~~ unless a waiver is granted under (4).

(2) and (3) remain the same.

(4) The department may grant a waiver to the requirement in (1). In addition to the requirements of ARM 17.36.601, a waiver request from this setback must demonstrate that:

(a) connection to the public system is physically impractical; or

(b) easements cannot be obtained.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to move the requirements for public water and wastewater system connections from ARM 17.36.328 to ARM 17.36.123 for the reasons discussed above in the General Reason Statement.

Currently, the rule requires subdivisions to connect to a public system if a public system is within 500 feet of the subdivision. The department may grant a waiver from this requirement if connection to the public system is physically or economically impractical, which under current rules means the cost of constructing the connection to the system is more than three times the cost of constructing approvable systems on the site.

Experience in administering this rule has revealed the difficulty of determining when a connection is economically impractical. Cost estimates considered by the department vary in the accuracy, scope, and components listed which make granting a waiver dependent on subjective criteria. Likewise, feedback from stakeholders indicates that contractor cost estimates for projects that may not be completed are not an effective use of their time.

On the other hand, connection to public systems is often preferable because of increased monitoring requirements and the ongoing regulatory relationship with such systems. To balance these, the department proposes eliminating the economic impracticality standard in favor of reducing the distance to public systems from 500 feet to 300 feet. This would reduce the number of expensive longer distance connections but would ensure that closer systems would connect to public facilities. These changes would also make the rule more transparent, predictable, and easier for both consultants and reviewing authorities to administer.

The department proposes to maintain the allowance in the rule to not require connection if the connection would create an environmental or public health risk or if the connection would be physically impractical or easements cannot be obtained. The determination of whether a connection is physically impractical is based on site specific conditions that would require specialized construction methods to install the connection. The other remaining proposed changes to the rule consist of wording, updates, and organizational improvements, which are otherwise not substantive changes.

17.36.345 (17.36.126) ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) and (b) remain the same.

(c) Department Circular DEQ-3, "Standards for Small Water Systems," ~~2018~~ 2023 edition;

(d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," ~~2013~~ 2023 edition;

(e) through (g) remain the same.

~~(h) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems," 2002 edition;~~

(i) remains the same but is renumbered (h).

~~(j) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems," 2002 edition;~~

(i) Department Circular DEQ-20, "Standards for Non-Public Water Systems, "2023 edition;

(k) through (n) remain the same, but are renumbered (j) through (m).

(2) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to transfer ARM 17.36.345 to ARM 17.36.126 as part of the department's proposed rule reorganization discussed above in the General Reason Statement. The department also proposes adopting and incorporating the 2023 edition of DEQ-4 and the new circular DEQ-20, which are proposed to be adopted in this notice. As discussed in the reason statement for the new circular DEQ-20, the department also proposes to transfer the requirements of circulars DEQ-11 and DEQ-17 to the new circular DEQ-20.

7. The rules proposed to be amended are as follows, new matter underlined, deleted matter interlined:

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) "Accessory building" ~~means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.~~ has the same meaning as defined in ARM 17.38.101.

(2) "Approved well drilling area" is an area or areas designated on a lot layout within which a well may be drilled. The area must meet all required well location setbacks, including those for well isolation zones.

(2) through (8) remain the same, but are renumbered (3) through (9).

~~(9)~~(10) "Connection" means a line that provides water or sewer service to a single building or to a main building with accessory buildings. The term is synonymous with "service connection~~.~~" as defined in ARM 17.38.101. For purposes of ~~ARM 17.36.328~~ ARM 17.36.123, "connection" means a water or sewer line that connects a subdivision to a public system.

(10) and (11) remain the same, but are renumbered (11) and (12).

~~(12)~~(13) "~~Drainageway~~" "Drainage way" means a course or channel along which storm water moves in draining an area.

(13) and (14) remain the same, but are renumbered (14) and (15).

~~(15)~~(16) "Existing system" means a water supply or wastewater disposal system~~, in a proposed subdivision,~~ that was installed prior to the submittal of a subdivision application under this subchapter.

(16) through (20) remain the same, but are renumbered (17) through (21).

~~(21)~~(22) "Ground water monitoring" means measuring the depth from the natural ground surface to the seasonally high ground water ~~for a long enough period of time to detect a peak and then a sustained decline in the ground water level.~~ performed in accordance with Department Circular DEQ-4.

~~(22)~~(23) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water

irrigation system if the system meets the requirements of ARM 17.36.319 and Department Circular DEQ-4.

(23) through (27) remain the same, but are renumbered (24) through (28).

~~(28)~~(29) "Local health officer" means health officer as defined in ~~50-2-101,~~ 50-1-101, MCA, or the health officer's designee.

(29) remains the same, but is renumbered (30).

~~(30)~~ (31) "Main" ~~means any line providing water or sewer to two or more service connections, any line serving a water hydrant that is designed for firefighting purposes, or any line that is designed to water or sewer main specifications.~~ is defined in ARM 17.38.101.

(31) through (37) remain the same, but are renumbered (32) through (38).

~~(38) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.~~

(39) "Permanent space" means a space, regardless of occupancy, for recreational camping vehicles or mobile homes, with facilities for the supply of water or disposal of sewage provided by individual hookups, a service building, or centralized dump stations for sewage or fill stations for water.

(39) through (44) remain the same, but are renumbered (40) through (45).

~~(45) "Redoximorphic features" or "mottling" means soil properties associated with wetness that results from the reduction and oxidation of iron and manganese compounds in the soil after saturation and desaturation with water.~~

(46) and (47) remain the same.

~~(48) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.~~

(48) "Seasonal use" means use for not more than a total of four months (120 days) during any calendar year.

~~(49) "Seasonally high ground water" means depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.~~

(50) through (56) remain the same, but are renumbered (49) through (55).

~~(57) "Soil consistence" means the attributes of soil material as expressed in degree of cohesion and adhesion or in resistance to deformation or rupture. See Appendix B of Department Circular DEQ-4.~~

(58) remains the same, but is renumbered (56).

~~(59) "Soil structure" means the combination or arrangement of primary soil particles into secondary units or peds. See Appendix B of Department Circular DEQ-4.~~

~~(60) "Soil texture" means the amount of sand, silt or clay measured separately in a soil mixture. See appendix B of Department Circular DEQ-4.~~

(61) through (69) remain the same, but are renumbered (57) through (65).

~~(70)~~(66) "Well" ~~means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates~~ is synonymous with the term "water well" defined in 75-5-103(41), MCA.

(71) and (72) remain the same, but are renumbered (67) and (68).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to amend the definitions of "accessory building," "connection," "drainageway," "existing system," "ground water monitoring," "holding tank," "local health officer," "main," and "well" to include or update cross-references to other rules and statutes where those terms are already defined. This would remove duplicative definitions and ensure consistent definitions across department programs. No substantive changes are proposed to these definitions.

The department also proposes removing the definitions of "percolation test," "redoximorphic features" or "mottling," "sealed pit privy," "seasonally high groundwater," "soil consistence," "soil structure," and "soil texture." The terms are currently defined in either subchapter 9 or Circular DEQ-4, which is adopted by reference in ARM 17.36.345. This would eliminate redundant definitions. ARM 17.36.345 would be transferred to ARM 17.36.126.

The department proposes to adopt a new definition for "approved well drilling area" in conjunction with section 1.4.2 of proposed Circular DEQ-20 to provide greater flexibility in developing well locations without triggering additional review.

The department proposes to adopt a new definition for "permanent space" for RVs and mobile homes. Although 76-4-102(23), MCA, requires that lots that provide permanent multiple spaces for RVs and mobile homes are subdivisions that must undergo department subdivision review, the statute does not define that term, and a definition is necessary to provide regulatory transparency and consistency for RV and mobile home spaces. The department's proposed definition would apply to those spaces with individual risers or centralized facilities for the supply of water and disposal of sewage for the department to review. This definition would consider the facilities as an indication of permanence rather than the occupancy of the space. It is not practical for the department or the reviewing authority to monitor occupancy or to add or remove the requirement for subdivision review based on changes in occupancy. The department considered, but ultimately rejected, including dry spaces—that is, parking spaces without water or sewer facilities—within this definition. The department ultimately decided not to include dry spaces because they do not contain facilities to be reviewed and are not exclusive to RVs or mobile homes.

17.36.102 APPLICATION--GENERAL (1) To initiate review of ~~a subdivision~~ an application under 76-4-114 ~~76-4-125~~ or 76-4-134, MCA, a person must submit a complete application to the department. The application must be signed by all owners of record of the property ~~proposed to be subdivided~~ or properties. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) A subdivision application must be on a form ~~approved~~ provided by the department. Copies of the application form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, http://www.deq.mt.gov, or from the local reviewing authority.

(3) remains the same.

(4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, unless the file is inactive due to ground water monitoring, or other requirements imposed by the reviewing authority or another agency.

(5) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

~~(5)~~(6) In addition to meeting the requirements of this chapter, ~~subdivisions~~ parcels designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of ARM Title 37, chapter 111, subchapter ~~2~~ 12.

~~(6)~~(7) If ~~a proposed subdivision~~ an application includes facilities for onsite wastewater treatment or disposal, including gray water irrigation, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(8) The application procedures and requirements for previously approved facilities are described in ARM 17.36.112.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes several housekeeping and wording changes to update the rule and make it more clear. These changes are not substantive. In (4), the department proposes to allow an application that has been dormant for more than a year to be resumed if the cause for the delay is a requirement imposed by another agency. Because these delays may be outside the control of the applicant, it is unfair to require the applicant to reapply and submit new fees in such situations. Section (5) was transferred from current ARM 17.36.106(3), and would be in a more appropriate location for the current rule.

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of ~~a subdivision~~ an application:

(a) a fee calculation sheet, as provided by the department, and payment of ~~subdivision~~ review fees as required in subchapter 8;

(b) one copy of a design report and one copy of plans and specifications for water supply, wastewater treatment, and storm water systems~~;~~. Prior to final approval, the reviewing authority will require three copies of final plans and specifications;

~~(c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and specifications may~~

~~be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;~~

(d) remains the same, but is renumbered (c).

~~(e)~~(d) ~~a~~ vicinity maps or plans showing the locations of the following features ~~if they are within 100 feet of proposed or approved subdivision mixing zones, within 100 feet of proposed subdivision water supply or wastewater treatment facilities, or within 100 feet of the perimeter of the proposed subdivision~~:

(i) a small-scale vicinity map showing lakes, streams, irrigation ditches, wetlands, and springs located within 1/2 mile from any existing or proposed well or drainfield or perimeter of the subdivision; and

(ii) a large-scale vicinity map showing existing~~, previously approved, and proposed wells, wastewater treatment systems, and mixing zones~~ or approved public water and public wastewater facilities, drainfields, existing and approved mixing zones, or other sources of contamination within 500 feet of the boundaries of the subdivision; and lagoons within 1,000 feet of any existing or proposed drinking well;

~~(f)~~(e) evidence that the water source for the ~~proposed subdivision~~ application is sufficient in terms of quality, quantity, and dependability, in accordance with [NEW RULE I] ~~as required by ARM 17.36.331 and 17.36.332~~;

~~(g) if ground water is proposed as a water source, the applicant shall submit the following information:~~

~~(i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet, any known mixing zone as defined in ARM 17.30.502 within 500 feet, and any sewage lagoon within 1,000 feet. If the reviewing authority identifies a potential problem, it may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and~~

~~(ii) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer;~~

~~(h) if water is to be supplied by means other than individual on-site wells, information about water use agreements;~~

~~(i) if subsurface wastewater treatment systems are proposed:~~

~~(i) soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield;~~

~~(ii) seasonal high ground water information;~~

~~(iii) direction and percentage of slope across the treatment area or a contour map with a contour interval of at least two feet; and~~

~~(iv)~~(f) ~~any other~~ evidence to show whether the wastewater treatment systems, including gray water systems, are sufficient in terms of capacity and dependability in accordance with ARM Title 17, chapter 36, subchapter 3;

~~(j) if gray water irrigation systems are proposed:~~

~~(i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and~~

~~(ii) the location and design of the proposed systems;~~

(k) remains the same, but is renumbered (g).

~~(l) a storm drainage map and plan as required by ARM 17.36.310;~~

(h) evidence that storm water facilities will be of sufficient size and located to ensure proper drainage and treatment in accordance with ARM 17.36.310;

~~(m)~~(i) the name of the solid waste disposal site that will serve the subdivision and information as required in ARM 17.36.120;

~~(n)~~(j) a copy of any environmental assessment ~~required~~ prepared for the subdivision ~~under Title 76, chapter 3, MCA~~;

~~(o)~~(k) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the ~~proposed~~ subdivision;

~~(p) a copy of applicable letters of approval or denial from local government officials;~~

(l) if planning and platting approval is required under Title 76, chapter 3, MCA, the applicant must provide:

(i) a copy of the preliminary plat approval and findings of fact; and

(ii) any public comments or summaries of public comments collected as provided in 76-3-604(7), MCA;

~~(q) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;~~

~~(r)~~(m) a copy of applicable supporting legal documents;

~~(s)~~(n) except for connections to existing public systems addressed under ~~ARM 17.36.328(2)(b)(iv)~~ ARM 17.36.123 or projects within reservation boundaries, if the proposed water supply is from wells or springs, or is relocating an existing multiple-user water supply, a letter from the Department of Natural Resources and Conservation stating that the water supply~~, either~~:

(i) ~~is exempt from water rights permitting requirements; or~~ is, or is not, located in a controlled groundwater area; and

(ii) ~~has a water right, as defined in 85-2-422, MCA.~~ is either exempt from water rights permitting requirements or has a water right, as defined in 85-2-102, MCA;

(o) for projects within reservation boundaries, water rights predetermination information or the equivalent authorization may be provided by the appropriate water management board;

~~(t) a copy or a summary of any public comments on preliminary sanitation information collected as provided in 76-3-604(7), MCA;~~

~~(u) if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document;~~

(p) a copy of any existing certificate of subdivision approval and the approved lot layout document;

(q) a letter from the Montana Sage Grouse Habitat Conservation Program or evidence that the subdivision is located outside designated sage grouse habitat as required under Executive Order 12-2015;

(v) and (w) remain the same, but are renumbered (r) and (s).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes several changes to ARM 17.36.103, which sets forth requirements for subdivision applications. These changes would more accurately describe the application process, reduce duplication in other parts of the rules, consolidate similar requirements, and update relevant cross-references. These changes also would remove extraneous requirements by focusing on that information necessary for the reviewing authority to review a subdivision application.

In addition to these changes, the department proposes to modify the vicinity map requirements to ensure that applications legibly present relevant information and account for various features that may affect the proposed facilities. Both small-scale and large-scale vicinity maps are necessary because small-scale maps help in locating the subdivision but may not show adjacent developments, existing public systems, potential sources of contamination, or surface waters that may be close to the development. These changes also would extend the extent of interest for the small-scale vicinity map from 100 feet to 1/2 mile. This is necessary to address potential impacts between facilities and surface waters. This also covers the requirement to perform the adjacent to surface water trigger value analysis if there is high quality surface water within 1/2 mile down gradient of a proposed drainfield. The large-scale map would have public water and wastewater facilities, drainfields, and mixing zones within 500 feet of the subdivision and any lagoons or other sources of contamination within 1,000 of any drinking water well. This is necessary because the location of potential sources of contamination is needed for the reviewer to verify lagoon setbacks are met and non-degradation can be done correctly. The vicinity maps now require sources of contamination to be shown. Including all sources of contamination on the lot layout can make them difficult to read, impact the scale of the lot layout, and is unnecessary if the information is provided to the reviewer on the vicinity map.

The proposed changes would remove (1)(g), which provides submittal requirements for applications with groundwater sources, to streamline the rule. These requirements are more appropriately located in the vicinity map requirements in proposed (1)(d) and in section 1.4.2 of proposed Department Circular DEQ-20. The department only proposes to reorganize these requirements; no substantive changes have been proposed.

The proposed changes would remove (1)(i), which provides submittal requirements for applications that propose subsurface wastewater treatment systems. These requirements would be more appropriately incorporated into ARM 17.36.320(3). No substantive changes have been proposed.

The proposed changes would remove (1)(j), which provides submittal requirements for applications that propose gray water irrigation systems. These requirements are already set forth ARM 17.36.319 and need not be repeated in this rule.

In (1)(n) and (o), the department proposes updates to the requirements for water rights information. In (1)(n), a water rights letter would be required for relocations of existing multiple-user wells, which are most likely to impact water

rights. A statement regarding a controlled groundwater area also would be required, since wells located in a controlled groundwater area may be designated due to lack of dependable water or pollution which could impact setbacks or the quality and dependability of water supplies. In (1)(o), the department proposes updated water rights language that is necessary to address current and future changes to water right jurisdiction based on tribal water compacts.

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) The applicant shall provide ~~four copies of~~ lot layout documents for the ~~proposed~~ subdivision application. At least one copy of the lot layout must be submitted with the subdivision application. Prior to final approval, four copies of the final lot layout must be submitted. The lot layout documents must be on sheets no larger than 11" x 17", at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

(2) remains the same.

(a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the ~~proposed~~ subdivision is located;

(b) through (f) remain the same.

~~(g) locations, sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);~~

(h) and (i) remain the same, but are renumbered (g) and (h).

~~(j)~~(i) information as set out in Table 1 for the specific water supply, ~~and~~ wastewater, and storm water facilities ~~systems~~ in the subdivision~~.~~, and those located within 100 feet of the perimeter of the subdivision or parcel. All systems must be labeled as "existing" or "proposed."

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water or municipal sewer systems	~~Subdivisions served by municipal wastewater systems~~
Existing wells and proposed well~~s~~ locations or approved drilling areas, setbacks in ARM 17.36.323 Table 2, and features listed in	X	X	X	~~X~~

ARM 17.36.103(1)(d) within 100 feet of the subdivision				
Water lines (suction and pressure)			X	~~X~~
Water lines (extension and connections)	X	X	X	~~X~~
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Existing and proposed gray water irrigation systems	X	X	X	~~X~~
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	~~X~~
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form	X	X	X	~~X~~

Floodplain boundaries	X	X	X	~~X~~
Cisterns	X	X	X	~~X~~
Existing and proposed building locations	X	X	X	~~X~~
Driveways	X	X	X	~~X~~
Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of ground water flow	X	X		
Locations, sizes, and design details of ~~existing and~~ proposed storm water facilities	X	X	X	~~X~~
Locations of existing storm water facilities	X	X	X	

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes minor changes to ARM 17.36.104, which provides requirements for what must be included on the lot layout that is included with subdivision applications. These are housekeeping and wording changes to update the rule and make the requirements congruent with the information the department needs to review subdivision applications. The proposed amendment to (2)(i) that facilities within 100 feet of the subdivision be shown on the lot layout is made in conjunction with the department's proposed amendments to the vicinity maps in ARM 17.36.103. Showing the facilities within 100 feet of the subdivision on the lot layout is necessary to ensure that appropriate setbacks and other requirements have been met, while further sources of contamination are more appropriately shown on small- and large-scale vicinity maps, as discussed in the reason statement for ARM 17.36.103.

17.36.106 REVIEW PROCEDURES—LOTS FILED WITH SANITARY RESTRICTIONS BEFORE 1973 ~~APPLICABLE RULES~~ ~~(1) The procedures and timelines for review of subdivision applications by the reviewing authority are as provided in 76-4-114, MCA.~~

(2) remains the same, but is renumbered (1).

(a) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent; ~~and~~

(b) the proposed water supply must comply with the requirements of this chapter; and

(b) and (b)(i) remain the same, but are renumbered (c) and (c)(i).

(ii) the site for any subsurface wastewater treatment system may not exceed 25 percent in slope; and

(iii) no part of the lot utilized for the subsurface wastewater treatment system components addressed in Department Circular DEQ-4, Chapter 6 may be located in a 100-year floodplain~~; and~~.

~~(iv) the proposed water supply must comply with the requirements of this chapter.~~

~~(3) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-114, 76-4-125, MCA

REASON: The department proposes minor housekeeping changes, including a title change, to ARM 17.36.106, which provides requirements for subdivision lots recorded with sanitary restrictions before July 1, 1973, to make the rule more intuitive to understand. The department proposes removing the requirement in (3), which would be more appropriately transferred to NEW RULE I and ARM 17.36.102(5). No substantive changes to the rule are proposed.

17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS (1) remains the same.

(a) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification of compliance that is signed by the local health officer having jurisdiction. The applicant shall submit the certification to the department ~~with the subdivision application~~ prior to the department issuing a certificate of subdivision approval; or

(b) remains the same.

~~(2) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with (1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes to remove the requirement in (1) that an applicant must submit a certificate of compliance with local regulations with the subdivision application. This documentation is required before the department may approve the subdivision but is not necessary to be included in the initial application.

The proposed deletion of (2) would remove redundant requirements listed in ARM 17.36.110.

17.36.112 ~~RE-~~REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES ~~(1) This rule applies to amendments (rewrites) of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, sewage, or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:~~

(1) A facility previously approved under Title 76, chapter 4, MCA, that is submitted for review under this chapter is not subject to review if the facility:

~~(a) parcel boundaries are not changing, but changes are proposed to the facilities that would deviate from the conditions of the previous approval;~~

(a) is not proposed to be changed;

~~(b) parcel boundaries are not changing, but the previous approval has expired pursuant to ARM 17.36.314; or~~

(b) is not affected by a proposed change to another facility; and

~~(c) parcel boundaries are changed by an aggregation with other parcels.~~

(c) meets the conditions of its existing approval and is operating properly.

(i) To determine whether previously approved water, sewer, and storm water facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years unless the system is less than five years old.

(2) The owner of a parcel ~~in (1)~~ that deviates from the conditions of approval shall obtain approval from the reviewing authority as provided in ~~this section.~~ (3) through (6).

(3) Applications for amendments (rewrites) of certificates of subdivision approval must be submitted in accordance with ARM 17.36.102. The facilities are subject to the rules and standards in effect at the time the application is submitted, except that, if a requirement in the applicable rules and standards would preclude a previously approved use of the parcel, the department may consider a deviation or waive the requirement that would preclude the use. Waivers and deviations are subject to ARM 17.36.601. Applications for rewrites must also describe any changes to previously approved facilities. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

~~(3) The owner shall submit an application to the reviewing authority on a form approved by the department. Copies of the form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, http://deq.mt.gov/wqinfo/Sub/SubReviewForms.mcpx, or from the local reviewing authority.~~

(4) Amendments that consist solely of the relocation or modification of previously approved facilities may be made through approval of a revised lot layout document in accordance with (a) through (c).

(a) A revised lot layout document may be issued for lots with previously approved facilities if:

(i) the changes consist solely of the relocation or modification of previously approved facilities shown on the lot layout that do not affect the conditions of approval in a COSA statement;

(ii) there are no changes in lot boundaries; and

(iii) the changes comply with applicable rules. Changes in previously approved facilities are subject to the rules and standards in effect at the time the application is submitted, except that, if a requirement in the applicable rules and standards would preclude a previously approved use of the parcel, the department may consider a deviation or waive the requirement that would preclude the use. Revised lot layouts must show any changes to previously approved facilities. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(b) An applicant seeking approval of a revised lot layout must submit all of the following to the reviewing authority:

(i) a completed joint application, including the applicable review fee;

(ii) a copy of the revised lot layout document that complies with ARM 17.36.104; and

(iii) all other information that the reviewing authority deems necessary to demonstrate compliance with applicable rules.

(c) The approved revised lot layout must be filed with the county clerk and recorder and a copy must be provided to the department.

~~(4) The application must describe any proposed new facilities, any changes to previously approved facilities, and any new parcel boundaries. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.~~

(5) At the time of septic permitting, local health departments that have been certified as the reviewing authority under ARM 17.36.116 may approve minor deviations from a certificate of subdivision approval without triggering an additional review under this chapter.

(a) The proposed minor deviations must meet the requirements of the most current version of DEQ-4 and this rule.

(b) Minor deviations are limited to:

(i) replacing distribution piping with gravelless trenches or vice versa;

(ii) replacing a standard trench system with a pressure-dosed system;

(iii) replacing a previously approved system with an equivalent system;

(iv) replacing components in a previously approved system with equivalent components;

(v) replacing the wastewater treatment system with a system that provides greater treatment than the approved system;

(vi) installing any Level 2 system in place of any other Level 2 system that provides equivalent treatment; and

(vii) approving changes to sizes of approved wastewater treatment systems, unless there are site constraints that would cause a violation of this chapter.

~~(5) The reviewing authority shall review the application pursuant to all applicable requirements, including fees, set out in ARM Title 17, chapter 36, subchapters 1, 3, 6, and 8. The application is subject to the rules in effect at the time the application is submitted, except that, if a requirement in the applicable~~

~~rules would preclude a previously approved use of the parcel, the department may waive the requirement that would preclude the use. Waivers are subject to ARM 17.36.601.~~

(6) Amendments to an existing certificate of subdivision approval that consist solely of replacing approved facilities for the supply of drinking water or disposal of wastewater with connection to a municipal or county public water system or public wastewater system must be submitted using a notification of change form provided by the department or by submitting an application under ARM 17.36.112(3).

~~(6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed, are not affected by a proposed change to another facility, are operating properly, and meet the conditions of their approval. To determine whether previously approved water and sewer facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years.~~

~~(7) Except as provided in (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval.~~

~~(8) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. The approved revised lot layout document must be filed with the county clerk and recorder and a copy must be provided to the department.~~

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: The department proposes several updates to the requirements regarding previously approved facilities, subdivision rewrites, and approval of deviations from the conditions of approval under 76-4-130, MCA. These rule changes would ensure that the level of review for proposed modifications is commensurate with the significance of the modifications.

Section (1) concerns subdivision applications that involve facilities previously approved under Title 76, chapter 4, MCA. Under the existing rule, previously approved facilities are not subject to re-review only if parcel boundaries are not proposed to be changed. If, for instance, an owner proposed to divide a 15-acre parcel with a previous approval into three separate parcels, the previously approved facilities would be subject to re-review, even if the facilities were operating correctly and were not affected by the proposed change. Because re-review is not necessary in such situations, the department proposes to exclude all previously approved facilities from re-review, so long as the applicant can demonstrate that they are not proposed to be changed, are not affected by a proposed change to another facility, and meet the conditions of their approval and are operating properly.

Sections (2) through (6) provide the procedures to seek approval of facilities that deviate from the conditions of approval. In (3), the department proposes to simplify the rewrite procedures by clarifying that a rewrite application must be submitted subject to the same requirements as a new subdivision. In (4), the department proposes to better define the procedures for gaining approval through a revised lot layout. In (5), the department proposes a new procedure for gaining

approval of minor deviations, which are more appropriately handled at the time of septic permitting. In (6), the department proposes to adopt the requirement a notification of change form be submitted to the department for deviations under 76-4-130(2), MCA, which is necessary for the department recordkeeping.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH AS THE REVIEWING AUTHORITY (1) A local department or board of health, if it requests certification, must be certified as the reviewing authority within the scope of 76-4-104(3), MCA, if the following requirements are met and the sanitarian or engineer is qualified as described in ~~(2)~~ (3):

(a) remains the same.

~~(b) unless delegated under 75-6-121, MCA, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems, except that a local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the system is required; and~~

~~(i) the provisions of Title 76, chapter 4, MCA;~~

~~(ii) this chapter;~~

~~(iii) applicable department circulars;~~

~~(iv) Title 75, chapter 5, MCA;~~

~~(v) ARM Title 17, chapter 30, subchapters 5 and 7; and~~

~~(vi) other applicable laws and regulations.~~

(2) The local department or board of health is required, pursuant to a written contract, to review subdivision applications according to the requirements of Title 76, chapter 4, MCA, and this chapter.

~~(2)~~(3) A registered sanitarian or registered professional engineer~~, prior to~~ must complete the following before becoming certified to perform~~ing~~ subdivision review~~s~~ ~~shall~~:

(a) remains the same.

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a ~~department-approved~~ certified registered sanitarian or professional engineer; and

(c) for individuals previously ~~qualified~~ certified under this subsection, complete at least one subdivision review in the preceding two years. Previously ~~qualified~~ certified individuals who have not completed at least one subdivision review in the preceding two years shall, prior to performing subdivision review, satisfy the requirements in ~~subsection (2)(a)~~ (3)(a).

(3) remains the same, but is renumbered (4).

(a) within the ~~55-day~~ statutory review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted an element review and a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that ~~either of these~~ any part of these tasks was not completed, the department may

return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the ~~55-day~~ statutory review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to ten percent of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

(i) through (c) remain the same.

(d) ~~in addition, to, or instead of, examining locally reviewed applications during the 55-day review period,~~ the department may conduct an annual audit of a representative sample of locally reviewed applications.

(4) remains the same, but is renumbered (5).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-105, MCA

REASON: The proposed amendment to ARM 17.36.116 would provide wording and organizational improvements that remove unnecessary language that is already provided in statute and rule without any substantive changes.

17.36.310 STORM DRAINAGE (1) remains the same.

(2) Storm drainage plans must be prepared by a professional engineer ~~and must comply with the requirements in ARM 17.36.314~~ if the subdivision application proposes either of the following:

(a) remains the same.

(b) a lot proposed ~~for use other than a single living unit~~ with greater than 25 percent impervious area.

(3) Storm drainage plans that are required to be designed by a professional engineer under (2) must meet the requirements in ARM 17.36.121 except for the following:

(a) a three-year expiring approval in ARM 17.36.121 does not apply;

(b) certification and as-built drawing requirements listed in ARM 17.36.121(2) through (4) do not apply for retention ponds for residential lots, designed solely for, and located on, the lot where the additional runoff is generated; and

(c) certification and as-built drawing requirements listed in ARM 17.36.121(2) through (4) are required for storm water facilities that treat additional runoff generated on 2 or more lots.

(3) and (4) remain the same, but are renumbered (4) and (5).

~~(5)~~(6) The reviewing authority may exempt the requirements of (1), (2), ~~and~~ (3), and (4) for either of the following:

(a) subdivisions located entirely within a first-class or second-class municipality, as described in 7-1-4111, MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM 17.30.1102, if:

(a) and (b) remain the same but are renumbered (i) and (ii).

(b) lots over 5 acres in size if the following conditions are met:

(i) the proposed impervious area on the lot will be less than 5% of the lot area, including easements and right-of ways;

(ii) the proposed development will include best management practices to prevent pollution of state waters and reduce erosion and sedimentation; and

(iii) the applicant must provide information demonstrating the subject parcels qualify for the criteria in (i) and (ii).

~~(6)~~(7) If material will be displaced or added within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals ~~have been~~ can be obtained. Adequate evidence must be in the form of a floodplain permit or certification from the floodplain coordinator.

(7) through (9) remain the same, but are renumbered (8) through (10).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The department proposes modifying the requirements for professional engineers for storm water designs. Currently, a professional engineer is required for applications that contain six or more lots or for lots proposed for use other than a single living unit with greater than 25 percent impervious area. The department proposes to maintain the six or more lot requirement but to remove the single living unit requirement, thus considering only the amount of impervious area instead of the use of the property. The department added the requirement for storm water plans to be prepared by a professional engineer in 2002, for uses other than a single family dwelling. The department has consistently maintained commercial use or more than one single living unit as a condition requiring the services of a professional engineer. The department received comments in response to MAR Notice No. 17-392 regarding the 2018 amendments to this rule, in which the commenter pointed out that a single living unit can have as much or more impervious surface than a duplex. At the time, the department maintained the rule in its current form, concluding that additional living units would have additional needs for parking and other impervious areas.

Experience in administering this rule has led the department to reconsider the commercial use and single living unit requirements in this rule. In reviewing storm water plans, the department has observed that the amount of impervious surface drives storm water design complexity more than the type of land use. If additional parking areas are shown in relation to a duplex, but the total impervious area is still under 25 percent, the proposal is not necessarily more complex. Also, subdivision submittals proposing duplexes or additional dwelling units have greatly expanded since 2002, and these submittals are unnecessarily detailed for those submittals with less than 25 percent impervious surface and fewer than 6 lots.

In (3), the department proposes changes to the requirements for certifications and as-builts for storm water designs. Currently, these requirements are the same as those for P.E.-designed water and wastewater facilities. The department now proposes to remove the requirement that P.E. designs for storm water designs expire after three years. This was originally adopted to align with the time requirements for water and wastewater facilities. This change is based on experience administering the existing storm water requirements, as the department has observed that storm water management is typically not prone to changes over

time. For example, a retention or detention pond designed for a set precipitation or runoff event would have the same or very similar requirements today as it would five or ten years from now.

The department also proposes removing the certification and as-built requirements for storm water facilities that are designed solely for, and are located entirely on, the lot where the additional runoff is generated. Certification and as-builts would still be required for storm water facilities that are designed to manage storm water from more than one lot. Examples of such facilities are retention/detention facilities serving multiple lots, roadside ditches, and conveyance structures. For instance, if a subdivision includes eight lots each with a retention pond, a road with roadside ditches, and a shared retention pond for the storm water runoff from the road, the department would require the applicant to submit certification and as-builts for the shared storm water facilities: roadside ditches and the shared retention pond for the road, but not the individual residential retention ponds. These changes are necessary because they better account for the real-world timeline for such development. Lots are often sold at staggered intervals and storm water facilities are typically not installed until the lots are sold.

In (6), the department proposes to include a new exemption in (b) from the storm water design requirements of this section if a lot is 5 acres or larger and has less than 5% impervious area as allowed in the 2021 amendments to 76-4-104(6)(e), MCA. The qualifying criteria proposed in the rule is necessary to reduce impacts of development on adjacent properties and best management practices to help protect high quality surface waters from contamination.

In (7), the department proposes to update the required documentation when work is proposed within a delineated floodplain. The current language of the rule requires documentation to be provided showing that a floodplain permit approval has been obtained. The proposed language would allow specific documentation from the floodplain coordinator indicating that a permit could be obtained. Floodplain permits expire, and need to be in place at the time of construction. However, if other approvals or construction delays happen, the applicant may need to renew the floodplain permit before construction begins.

17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION

(1) remains the same.

(2) Multiple-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a professional engineer and are subject to the requirements in ~~ARM 17.36.314~~ ARM 17.36.121.

(3) Subsurface wastewater treatment systems must comply with ARM Title 17, chapter 36, subchapter 3, and Circular DEQ-4.

(a) The applicant must provide the following minimum information for wastewater submittals:

(i) site evaluation information, including topography, soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield, and seasonal high ground water information;

(ii) drainfield dimensions, including lateral length and lateral width based on application rate and design flow; drainfield location and type of system; and direction

and percentage of slope across the treatment area or a contour map with a contour interval of at least two feet;

(iii) setback information as required by ARM 17.36.323; and

(iv) criteria necessary to make a non-degradation significance determination.

(b) Additional design details showing compliance with DEQ-4 will be required by the reviewing authority if:

(i) the proposed wastewater system is multiple-user or public;

(ii) the discharge is not residential strength;

(iii) the local health department does not issue septic permits for parcels reviewed under Title 76, chapter 4, MCA; or

(iv) the site will require strict adherence to the lot layout at the time of installation, as determined by the reviewing authority.

~~(3)~~(4) For subsurface systems, a minimum separation of at least four feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer~~,~~. ~~except that at least six feet of natural soil must exist on a slope of greater than 15 percent.~~ Exceptions to this rule are:

(a) at least six feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer on a slope of greater than 15 percent; and

(b) for elevated sand mounds constructed in accordance with Department Circular DEQ 4, the depth of the key may be included as part of the separation distance between the infiltrative surface and a limiting layer.

(4) remains the same, but is renumbered (5).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes significant changes to the level of design detail that must be submitted to the reviewing authority for septic system reviews. Because septic systems are also subject to county-level septic permitting requirements, the proposed changes focus on those items that must be reviewed by the reviewing authority before construction and to define those requirements that are better addressed by local permitting authorities at the time of septic permitting. The items proposed in (3)(a) would typically provide enough information at the time of COSA review to ensure that a system meeting the requirements of DEQ-4 could be installed on a parcel while still meeting setback and non-degradation requirements intended to protect state waters and provide consumer protection for landowners. Design details for pressure dosing and septic tanks may be different based on the location of buildings on the property and are better addressed by local counties at the time of septic permitting, which may be many years after the COSA is issued.

The department proposes to add (3)(b) to identify situations when additional design information beyond the minimum requirements in (3)(a) may be requested to ensure that a system meeting the requirements of DEQ-4 can be constructed on the lot. In these situations, additional protection is needed and facilities may need to be installed in nearly exact locations to meet the requirements listed in the COSA.

Section (2) would be amended to update the reference rule number for systems requiring design by a professional engineer to align with that proposed rule

transfer. Section (3) includes language regarding information needed to evaluate subsurface wastewater treatment systems transferred from ARM 17.36.103(1)(i) because this would be a more appropriate location for those requirements.

In (4), the department proposes to strike the general requirement for 6 feet of soil on a slope greater than 15 percent and specifically describe the requirement in (4)(a) in order to ensure adequate separation. Section (4)(b) is proposed to allow use of the key fill material, which is adequate for use as part of the 4 foot separation to groundwater.

17.36.322 SEWAGE SYSTEMS: SITING (1) through (4) remain the same.

(5) Pursuant to 76-4-104(6)(i), MCA, a proposed drainfield mixing zone must meet the requirements of ARM 17.36.122(6) ~~be located wholly within the proposed subdivision where the drainfield is to be located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed mixing zone outside the boundaries of the proposed subdivision. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA~~.

(6) and (7) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to transfer the mixing zones and subdivision boundaries to ARM 17.36.122 for the reasons described in the General Reason Statement.

17.36.323 SETBACKS (1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2
SETBACK DISTANCES
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
Public or multiple-user drinking water wells/springs	-	100 (4)	100

Individual and shared drinking water wells	-	50 (4)	100
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)
Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (4) (11) (13)
Floodplains	10 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	100 (11) (14)
Mixing zones	100 (4)	-	-
Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)
Sewage Lagoons	1000 (17)	-	-

(1) Sealed components include holding tanks, sealed pit privies, raw wastewater pumping stations, ~~dose tanks, and septic tanks~~ the components addressed in chapters 4 and 5 of Department Circular DEQ-4, and those components completely contained within a sealed vessel. Vents and access ports for sealed components must be located a minimum of 1 foot above the 100-year flood elevation. Sealed components must meet the requirements of ARM 17.36.322(4).

(2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7, except those components completely contained within a sealed vessel.

(3) through (12) remain the same.

(13) A waiver may be granted by the department. ~~, pursuant to ARM 17.36.601,~~ In addition to the requirements of ARM 17.36.601, a waiver request from

this setback must ~~if the applicant~~ demonstrate~~s~~ that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(14) After consultation with the local health department, a waiver may be granted by the department, pursuant to ARM 17.36.601., ~~if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.~~ In addition to the requirements of ARM 17.36.601, a waiver request from this setback must:

(a) demonstrate that the surface water or spring seasonally high water level is at least 100-foot horizontal distance from the drainfield;

(b) demonstrate that the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation; and

(c) provide any required approval(s) from the local floodplain coordinator.

(15) and (16) remain the same.

(17) A lesser setback may be allowed in accordance with ARM 17.30.1702.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to define sealed components in footnote (1) to include advanced treatment units located within a sealed vessel to provide more flexibility for applicants while maintaining an equivalent level of protection in floodplain areas. This section also proposes specific requirements to ensure that vents would be located higher than the 100-year base flood elevation.

The department proposes removing advanced treatment components located within a sealed vessel from the definition of "other Components" in (2) because they would be included in the definition of sealed components. The current reference to all systems included in Chapter 7 of Circular DEQ-4 includes all advanced wastewater treatment systems. This would still apply to systems such as open-top recirculating sand filters in unsealed vessels that would be susceptible to impact from reduced setbacks to floodplains and surface water. Some systems that would meet the definition of a system in Chapter 7 of DEQ-4 are constructed to be totally contained within a septic tank, or similar sealed vessel. This amended requirement would be consistent with the current requirement which considers septic tanks a sealed component, while maintaining an equivalent level of protection in floodplain areas.

The department proposes to reorganize the waiver requirements in (13) and (14) to clarify that waiver requirements in those footnotes are threshold requirements and that the waiver criteria of ARM 17.36.601 also must be met when a waiver is requested for the separation between drainfields/soil absorption systems and surface waters and floodplains.

The department also proposes adding footnote (17) along with the lagoon setback added to Table 2 to reference the allowances for lesser setbacks between wells and lagoons in ARM 17.30.1702.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Facilities previously approved under Title 76, chapter 4, MCA, must be reviewed in accordance with ARM 17.36.112. Public sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) through (5) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes adding a reference to ARM 17.36.112 to indicate the requirements that pertain to previously approved facilities in ARM 17.36.327(1).

17.36.340 LOT SIZES (1) remains the same.

(2) Subject to (4), each proposed new subdivision lot, area proposed for condominiums, or area proposed for permanent multiple spaces for recreational camping vehicles or mobile homes, must be of sufficient size to satisfy all of the following criteria:

(a) remains the same.

(b) drainfield mixing zones must be located in compliance with ~~ARM 17.36.322(5)~~ ARM 17.36.122;

(c) well isolation zones must be located in compliance with ~~ARM 17.36.330(4)~~ ARM 17.36.122; and

(d) remains the same.

(3) For lots created before July 1, 1973, and for which sanitary restrictions are proposed to be lifted, the requirements of (2)(a) and (d) apply, subject to the provisions of ~~ARM 17.36.106(3)~~ [NEW RULE I(1)].

(4) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to update references to reflect organizational changes in the referenced rules.

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENT (1) remains the same.

(2) Department Circular DEQ-4, ~~2013~~ 2023 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: The proposed adoption of the 2023 edition of DEQ-4 is necessary to ensure consistency between department subdivision regulations and local septic permitting requirements.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (20)(b) remain the same.

(c) Department Circular DEQ-3, ~~2018~~ 2023 edition, which sets forth minimum design standards for small water systems;

(d) Department Circular DEQ-4, ~~2013~~ 2023 edition, which sets forth standards for subsurface wastewater treatment systems;

(e) through (21) remain the same.

REASON: The proposed adoption of the 2023 editions of DEQ-3 and DEQ-4 is necessary to ensure that all sections of the department use the same, updated edition of the circular.

AUTH: 75-6-104, MCA
IMP: 75-6-104, 75-6-112, 75-6-121, MCA

8. The rules proposed to be repealed are as follows.

17.36.330 WATER SUPPLY SYSTEMS--GENERAL

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to repeal ARM 17.36.330(1) and transfer the requirements for applicants to demonstrate adequate water quality and quantity currently presented in this section to sections 1.3.2 of DEQ-20. This is not a substantive change, except that the department proposes to remove ARM 17.36.330(1)(b)(iii) because the rule is redundant. The requirements for public water systems are set out in Circular DEQ-1 and Circular DEQ-3.

The department proposes to repeal ARM 17.36.330(2) and transfer the requirements to section 1.4.2.a of Circular DEQ-20. In doing so, the department proposes to require only contamination sources within 100 feet of the water source to be shown on the lot layout for increased legibility of such lot layouts. Contamination sources within 500 feet of the water source would still have to be addressed in the design report, as provided in section 1.3.1.e of proposed Circular DEQ-20.

The department proposes to transfer ARM 17.36.330(3) to Standard 1.4.2(f) of DEQ-20. This is not a substantive change.

The department proposes to repeal ARM 17.36.330(4) and transfer those requirements to section 1.3.2 of Circular DEQ-20, without substantive change.

The department proposes to transfer ARM 17.36.330(5) to Standard 1.4.2(b), 1.4.2(c) of DEQ-20 with no substantive change. The department proposes to transfer a portion of ARM 17.36.330(5) to ARM 17.36.122(4) as discussed in the reason statement for that rule.

17.36.331 WATER SUPPLY SYSTEMS: WATER QUALITY

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to repeal ARM 17.36.331. The requirements are currently listed in ARM 17.36.331(1)(a) through (e) are proposed to be moved to proposed new Department Circular DEQ-20, Standards 1.3.3,1.4.1, 2.1.2, 2.1.3 3.1.2, and 1.4.2(e), respectively, with substantive changes as outlined in this reason statement.

The department proposes to move ARM 17.36.331(1)(f) to Standard 1.4.1 of DEQ-20. The rule requires that a surface water or ground water source under the direct influence of surface water, as described in Department Circular PWS-5, may not be used as a water source for a non-public system.

The department proposes to repeal ARM 17.36.331(2) because the rule is redundant. The requirements for public water systems are set out in Circular DEQ-1 and DEQ-3.

17.36.332 WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes repealing ARM 17.36.332(1)(a) and (b) and transferring those requirements to proposed Standard 2.1.1 of DEQ-20, with changes as described in the reason statement for that circular.

The department proposes to repeal ARM 17.36.332(1)(c), remove the reference to multiple-user systems in DEQ-3, and list those requirements in Chapter 3 of DEQ-20.

The department proposes to repeal ARM 17.36.332(1)(d). The rule is redundant. The requirements for public water systems are set out in Circular DEQ-1 and 3.

The department proposes to repeal ARM 17.36.332(2)(a), (b), (c), (d) and list those requirements in Standard 2.1.1(a)(vi) of DEQ-20 for individual and shared systems without substantive changes.

The department proposes to repeal ARM 17.36.332(3) and list those requirements in Standard 2.1.1(b) of DEQ-20 for individual and shared systems without substantive changes.

The department proposes to repeal ARM 17.36.332(4) and list those requirements in Standard 1.3.2 of DEQ-20 for individual and shared systems. without substantive changes.

The department proposes to repeal ARM 17.36.332(5) and list those requirements without substantive changes in Standard 2.1.1(c) of DEQ-20 for individual and shared systems.

The department proposes to repeal ARM 17.36.332(6) and list those requirements with substantive changes in Standard 1.2 of DEQ-20 for individual and shared systems.

The department proposes to repeal ARM 17.36.332(7) and list those requirements in Standard 1.3.2 of DEQ-20 for individual and shared systems without substantive changes.

The department proposes to repeal ARM 17.36.332(8) and list those requirements in Standard 1.3.2 of DEQ-20 without substantive changes.

The department proposes to repeal ARM 17.36.332(9) because the rule is redundant with proposed ARM 17.36.103(1)(n) and (o).

17.36.333 WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes repealing ARM 17.36.333(1)(a) and listing those requirements in Standard 2.1.3 of DEQ-20 for individual and shared systems without substantive changes.

The department proposes to repeal ARM 17.36.333(1)(b) and list those requirements in Standard 3.3 of DEQ-20 for multiple-user water systems without substantive changes.

The department proposes to repeal ARM 17.36.333(1)(b)(i) and list those requirements in Standard 1.5 of DEQ-20 without substantive changes.

The department proposes to repeal ARM 17.36.333(1)(b)(ii) and list those requirements in Standard 3.1 of DEQ-20 for multiple-user water systems. Proposed changes to those requirements are discussed in the reason statement for that circular.

The department proposes to repeal ARM 17.36.333(1)(c) and list those requirements in Standard 2.1.3 of DEQ-20 for individual and shared systems without substantive changes.

The department proposes that ARM 17.36.333(2) will be transferred to NEW RULE I.

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to repeal ARM 17.36.334 and transfer the procedural requirements for operation and maintenance, ownership, and easements to ARM 17.36.122.

The department also proposes to repeal ARM 17.36.334(1) and list those requirements in Standard 1.3.5 of DEQ-20.

The department also proposes to repeal ARM 17.36.334(2). This rule is already covered in DEQ-1 for public systems.

The department also proposes to repeal ARM 17.36.334(3) and list those requirements in Standard 3.1 of DEQ-20.

The department also proposes to transfer ARM 17.36.334(4) to ARM 17.36.122.

The department additionally proposes to repeal ARM 17.36.334(5) and list those requirements in Standard 1.3.4 of DEQ-20.

17.36.335 WATER SUPPLY SYSTEMS: EXISTING SYSTEMS

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to repeal ARM 17.36.335 and transfer those requirements to Standard 1.6 of DEQ-20. Substantive changes are discussed in the reason statement for that circular.

17.36.336 ALTERNATE WATER SUPPLY SYSTEMS

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department proposes to repeal ARM 17.36.336 and list those requirements in Standard 1.7 of Circular DEQ-20 with no substantive changes. This proposed section includes criteria or alternate water supply systems currently listed in ARM 17.36.336, except that ARM 17.36.336(2) is deleted. Proof that a well is not an available source is no longer required. Wells are the preferred source in terms of cost and convenience. Experience in administering this rule has shown that applicants generally do not request alternate water supplies unless well sources are not feasible.

9. The proposed changes to Circular DEQ-3 are as follows:

Circular DEQ-3 ~~SMALL WATER SYSTEMS~~ NON-COMMUNITY PUBLIC WATER SYSTEMS

REASON: The department proposes to change the title of the proposed version of Circular DEQ-3 from "small water systems" to "non-community public water systems" as only standards for non-community public water supply systems would be addressed in the proposed version of Circular DEQ-3. This title change would make it easier for applicants to identify what type of systems are addressed in the proposed version of Circular DEQ-3.

Circular DEQ-3: 1.0 GENERAL

All reports, final plans, and specifications must be submitted at least 60 days prior to the date on which action by MDEQ is desired. The term "MDEQ," as used in this circular, refers to the Montana Department of Environmental Quality or a delegated division of local government. Environmental assessments and permits for construction, to take water, for waste discharges, for stream crossings, etc., may be required from other federal, state, or local agencies. No approval for construction can be issued until final, complete, and detailed plans and specifications have been submitted to MDEQ and found to be satisfactory. Three copies of the final plans and specifications must be submitted. An approved set will be returned to the applicant. Documents submitted for formal approval must include, but are not limited to, the following:

(a) through (f) remain the same.

(g) ~~for public water systems,~~ documentation that owner is committed to providing as-built drawings of the project and the certification letter required in ARM 17.38.101.

(h) through (i) remain the same.

REASON: The department proposes removing references to public water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

Circular DEQ-3: 3.0 GENERAL

In selecting the source of water to be developed, the designer must demonstrate, to the satisfaction of MDEQ, that an adequate quantity of water will be available and that the water delivered to the consumers meet the current requirements of MDEQ.

Approval of plans and specifications under this Circular is not a determination that a source is ground water for purposes of PWS-5 or the Surface Water Treatment Rule. Regardless of plan and specification approval, all sources must be evaluated by the Department pursuant to the requirements of PWS-5.

REASON: This change was added to update language to reflect the requirements in recently revised Department Circular PWS-5 and matches language recently updated in section 3.2.2 of DEQ-1.

Circular DEQ-3: 3.1 SOURCE DEVELOPMENT SURFACE WATER

Surface water and ground water under direct influence of surface water (GUDISW) sources must comply with the applicable sections of Department Circular DEQ-1, Standards for Water Works, including Section 3.1.

REASON: This proposed change clarifies both surface water and ground water under the influence of surface water must comply with the applicable sections of DEQ-1. This is not a substantive change.

Circular DEQ-3: 3.2 GROUND WATER

A ground water source includes all water from dug, drilled, bored, or driven wells and infiltration lines determined to be not groundwater under the direct influence of surface water. Prior to construction of a well ~~intended to serve a public water supply~~, the proposed location and the plans and specifications must be approved by MDEQ in accordance with the requirements of this section. In order to assess the available water quality and quantity, MDEQ may require construction and testing of the well in accordance with the approved plans and specifications and at the approved location prior to approval of other system components. All wells must be constructed by a licensed water well contractor in accordance with Title 37, Chapter 43, MCA, and ARM Title 36, chapter 21 current edition, (Water Well Contractor rules) with the following additional requirements.

REASON: The proposed change would be added to provide specificity to the requirement and would not be a substantive change.

The department proposes removing references to public water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

Circular DEQ-3: 3.2.2.2 PHYSICAL AND CHEMICAL QUALITY

a. Every new, modified, or reconditioned ground water source must be examined for applicable physical and chemical characteristics by tests of representative samples in laboratories certified by the Department of Public Health and Human Services, with the results reported to MDEQ.

1. Testing must include nitrate/nitrite and total dissolved solids or conductivity for ~~as a minimum for multi-user non-public systems and~~ transient non-community public water systems. Additional testing may be required for other parameters where MDEQ has information suggesting they may be present in harmful quantities or where additional regulatory requirements apply.

(2) through (3) remain the same.

REASON: The department proposes removing references to multiple-user water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

Circular DEQ-3: 3.2.4.3 GROUND WATER TESTING AND RECORDS

Geological data must be determined in accordance with ARM 36.21.667. A copy of the well log must be submitted to MDEQ. ~~For public water supply systems, an~~ An accurate geological location, such as latitude and longitude or GIS coordinates as determined by GPS to an accuracy of +/- 25 feet, must be provided.

REASON: The department proposes removing references to public water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that

differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

Circular DEQ-3: 3.2.5.1 GENERAL WELL CONSTRUCTION Minimum protected depths: ~~for public water systems~~

(a) through (c) remains the same.

(d) Microbial treatment required under ~~a. or~~ b. or c. must provide 4-log inactivation and/or removal of viruses. A deviation of this standard may be granted by MDEQ in accordance with the procedures of Section 1.7 if the applicant shows there are no existing or approved sources of viral or bacterial contamination from human or animal waste within the 200-day time-of-travel zone of influence for the well and that new sources of contamination will not be introduced for this 200-day time-of-travel zone.

(e) remains the same.

REASON: The department proposes removing references to public water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

The change in (d) corrects a typographical error in the current edition of Circular DEQ-3.

Circular DEQ-3: 3.2.5.5 GROUTING REQUIREMENTS

~~a. For multiple-user water systems, all permanent well casing must be sealed in accordance with ARM 36.21.654 through 36.21.660. The casing must be provided with centralizers in accordance with ARM 36.21.649.~~

~~b. For public water systems~~

(1) remains the same, but is renumbered (a).

(2) remains the same, but is renumbered (b).

(2)(a) through (2)(e) remain the same, but are renumbered (1) through (5).

REASON: The department proposes removing references to public water supplies and multiple-user water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted. In this section, requirements for multiple-user systems are stricken and would be transferred to proposed section 3.3 of new Department Circular DEQ-20.

Circular DEQ-3: 4.0 GENERAL The need for and design of treatment processes and devices will depend on evaluation of the nature and quality of the water to be treated and the desired quality of the finished water. In accordance with ARM 17.38.101, treatment processes or equipment used for compliance with Maximum Contaminant Levels (MCL) or for disinfection of public water systems are required to be designed by a registered professional engineer. Treatment processes for noncommunity systems installed for reasons other than MCL compliance or

disinfection are not required to be designed by a professional engineer if the following conditions are met:

(a) chemicals must meet NSF/ANSI Standard 60;

(b) water contact materials or equipment components must meet appropriate ANSI/AWWA or NSF/ANSI standards ~~meet NSF Standard 61~~; and

(c) remains the same.

REASON: The department proposes to amend section 4.0(a) and (b) to allow appropriate NSF/ANSI standards rather than just NSF Standard 60. There are several NSF/ANSI standards applicable to water contact or drinking water system components. The proposed language would allow additional appropriate NSF/ANSI standards to be utilized without submitting deviations to the department. This proposed change would reduce the department time reviewing a deviation and the applicant time and fees associated with submitting a deviation.

Circular DEQ-3: 4.1.3 CHLORINATOR CAPACITY The chlorinator capacity must be able to maintain the minimum required chlorine residual in the water, as estimated under Section 4.~~3.~~1.2, when maximum flow rate coincides with anticipated maximum chlorine demand. It is recommended that the chlorinator have sufficient capacity to maintain a free chlorine residual of 2 mg/l.

REASON: The department proposes to provide the corrected reference to Section 4.1.2 instead of 4.3.

Circular DEQ-3: 4.4 WATER AND ICE VENDING MACHINES This standard applies only to water or ice vending machines that are regulated as transient non-community consecutive connections. Applicants seeking approval for a water or ice vending machine under this chapter must submit plans and specifications showing the treatment train and components, as provided in Standard 4.4.1, and an operation and maintenance manual, as provided in Standard 4.4.2. Applicants seeking approval for additional locations of previously approved machines must submit the information required by Standard 4.4.3.

REASON: The department proposes to add new Standards to section 4.4 of the proposed version of Circular DEQ-3 for water and ice vending machines that are regulated as transient non-community consecutive connections. These water and ice vending machines obtain water as a consecutive connection from an approved Public Water System (PWS). Therefore, they receive water that meets public health standards. Water and ice vending machines are currently reviewed under Circular DEQ-1. A DEQ-1 review for this type of machine is unduly detailed and usually requires several deviations. The addition of section 4.4 to the proposed version of Circular DEQ-3 would provide design standards applicable for water and ice vending machines to ensure the water received from a PWS, meeting public health standards, is not contaminated prior to consumption by the public. For example, the proposed standard requires machines to receive water from an approved PWS, comply with National Automatic Merchandising Association (NAMA) performance standards by providing a NAMA certification letter, allow access for cleaning, limit

lead exposure, be constructed of corrosion resistant materials, and disinfect water prior to dispensing.

Circular DEQ-3: 4.4.1 STANDARDS FOR WATER AND ICE VENDING MACHINES Water and ice vending machines must comply with the following requirements:

(a) The machine must receive water from an approved public water supply system that is in compliance with the requirements of Title 17, chapter 38, ARM.

(b) The machine must comply with the construction and performance standards established by the National Automatic Merchandising Association (NAMA), as demonstrated in a certification letter from NAMA.

(c) The machine must be designed, constructed, and located to allow easy cleaning and maintenance of all exterior and interior surfaces. The machine must be located in an area that is maintained in a clean condition.

(d) All water contact parts and surfaces must be constructed of corrosive resistant materials capable of withstanding repeated cleaning and sanitizing treatment.

(e) No solders or flux containing more than 0.2 percent lead or any pipe fittings containing more than 8 percent lead may be used.

(f) All water processed through a water or ice vending machine must be disinfected as a last treatment step before being dispensed. Machines using ultraviolet (UV) disinfection must be exposed to a minimum dosage of 16,000 $\mu Ws/cm^2$ UV energy at 254 nm.

(g) Fees will be determined at an hourly rate per ARM 17.38.106(3).

REASON: These requirements reflect current practice with the review of water and ice vending machines with requirements spelled out here to reduce the number of deviations associated with the current reviews under DEQ-1.

Circular DEQ-3: 4.4.2 WATER AND ICE VENDING MACHINE OPERATION AND MAINTENANCE Applicants for proposed water and ice vending machines must submit documentation describing how the machines would be operated and maintained. Such documentation must show that the proposed machine would be cleaned, serviced, and sanitized in accordance with the manufacturer's specifications; that inspections and service visits would be conducted at least once per month; and that equipment changeout (e.g., filter changes, UV lamp replacements, etc.) would be conducted at intervals sufficient to ensure that machine operates as designed and approved.

REASON: Proposed section 4.4.2 includes standards for operation and maintenance documentation and required inspection schedules for water and ice vending machines aimed at reducing potential water contamination at the machine.

Circular DEQ-3: 4.4.3 ADDITIONAL MACHINES AT NEW LOCATIONS An applicant that has received approval under 4.4.1 and 4.4.2 above may request approval for additional machines in different locations under the following circumstances:

(a) the request for approval must be made within 3 years of the initial approval.

(b) the additional machines at different locations must be the same as the machines in the initial approval.

(c) fees must be included for one hour of time provided per ARM 17.38.106(3). Should the review exceed one hour of time, the fee will increase in accordance with the hourly rate stated in ARM 17.38.106(3).

(d) the applicant must provide a certification letter stating that the vending machine has been installed in substantial accordance with the plans and specifications approved by the department and there are no deviations from the design standards other than those previously approved by the department pursuant to ARM 17.38.101.

(e) no additional machines may operate until a certification letter and a copy of bacteriological results are submitted to the Department.

REASON: Proposed section 4.4.3 provides a pathway for an applicant to request approval for additional water and ice vending machines in different locations. This proposed standard is designed to ensure public health standards while reducing the unduly detailed review under DEQ-1 requiring multiple deviations. Reduction of deviations would save the department time reviewing a deviation and the applicant time and fees associated with submitting a deviation.

Circular DEQ-3: 5.0 GENERAL In accordance with ARM 17.38.101, treatment processes or equipment used for compliance with Maximum Contaminant Levels (MCL) or for disinfection of public water systems are required to be designed by a registered professional engineer. Treatment processes for noncommunity systems installed for reasons other than MCL compliance or disinfection are not required to be designed by a professional engineer if the following conditions are met:

(a) chemicals must meet NSF/ANSI Standard 60;

(b) water contact or equipment components must meet appropriate NSF/ANSI standards ~~NSF Standard 61~~; and

(c) remains the same.

REASON: The department proposes to amend section 5.0.b to allow appropriate NSF/ANSI standards rather than just NSF Standard 60. There are several NSF/ANSI standards applicable to water contact or drinking water system components. The proposed language would allow additional appropriate NSF/ANSI standards to be utilized without submitting deviations to the department. This proposed change would reduce the department time reviewing a deviation and the applicant time and fees associated with submitting a deviation.

Circular DEQ-3: 6.2 PUMPS ~~The pump or pumps must be capable of providing the maximum daily pumping demand of the system, exclusive of fire flow.~~ With all pumps in service, the pump~~s~~(s) must be capable of providing the maximum daily demand plus fire flow demand, if provided, of the system. Additional capacity may be required if storage for the pump station service area is inadequate per

Section 7 of this circular. If only hydropneumatic storage is provided for the pump station service area, the pumping units must be sufficient to equal or exceed the peak instantaneous demand ~~with the largest pump out of service~~. For hydropneumatic pumping stations serving 50 or less equivalent dwelling units, MDEQ may allow a reduction in total pumping capacity provided the system can maintain the minimum pressures required in Section 8.1.1 with the largest pump out of service.

REASON: The department proposes to improve the wording of section 6.2 regarding pump requirements. These changes are proposed because the intent of this section is for the system to meet maximum daily demand (MDD) with the largest fire pump out of service and meet the MDD plus fire flow with all pumps in service. The proposed changes aim to explain that the department does not require two fire pumps.

Circular DEQ-3: 8.5 CROSS-CONNECTIONS AND INTERCONNECTIONS

No unprotected cross-connections may exist between the distribution system and any pipes, pumps, hydrants, or tanks whereby unsafe water or other contaminating materials may be discharged or drawn into the system. Cross-connections must be eliminated in conformance with ARM Title 17, chapter 38, subchapter 3 ~~for public systems~~.

REASON: The department proposes removing references to public water supplies in the proposed version of Circular DEQ-3 where the term is used to differentiate between multiple-user systems and public water supplies, since that differentiation would not be necessary if the proposed changes to DEQ-3 and DEQ-20 were adopted.

10. The proposed changes to Circular DEQ-4 are as follows:

DEQ-4: MONTANA STANDARDS FOR SUBSURFACE WASTEWATER SYSTEMS

Circular DEQ-4 Foreword

These standards, based on demonstrated technology, set forth requirements for the design and preparation of plans and specifications for subsurface wastewater treatment systems.

Users of these standards need to be aware that subsurface wastewater treatment systems are considered by the Environmental Protection Agency to be Class V injection wells and may require associated permits.

These standards are a revision of Department of Environmental Quality (DEQ) Circulars WQB-4, WQB-5, and WQB-6, 1992 Editions, and Circular DEQ-4, 2000, 2002, 2004, ~~and~~ 2009, and 2013 Editions.

REASON: Foreword updated to reflect this edition.

Circular DEQ-4: 1.1.1. GENERAL

These minimum standards apply to all subsurface wastewater treatment systems in Montana. In some cases, a reviewing authority (other than the Department of Environmental Quality) may have requirements that are more stringent than those set out in this Circular. Design details, as described in this Circular, are required for all multiple-user and public wastewater treatment systems. The information required for individual and shared wastewater treatment systems is found in ARM 17.36.320(3).

The term "reviewing authority," as used in these standards, refers to the Montana Department of Environmental Quality as referenced in the Sanitation in Subdivisions Act, Public Water Supply Act or Water Quality Act. The term "reviewing authority" can also be a division of local government delegated to review public wastewater systems pursuant to Administrative Rules of Montana (ARM) 17.38.102, a unit of local government that has adopted these standards pursuant to 76-3-504, Montana Code Annotated (MCA), or a local board of health that has adopted these standards pursuant to 50-2-116, MCA. Chart 1 shows this relationship graphically.

Chart 1 remains the same except that ARM 17.36.901 would be replaced with the corrected citation for ARM 17.36.913.

REASON: This additional language in section is necessary to ensure that DEQ-4 reflects the proposed changes to ARM 17.36.320(3), which would allow certain design details to be reviewed by the local health department at the time of septic permitting.

11. The proposed repeal of Circulars in their entirety is as follows:

Circular DEQ-11 MONTANA STANDARDS FOR DEVELOPMENT OF SPRINGS FOR INDIVIDUAL AND SHARED NON-PUBLIC SYSTEMS

REASON: The department proposes repealing current Circular DEQ-11 for the reasons described in the General Reason Statement. The requirements currently listed in DEQ-11 would be incorporated into Chapter 4 of proposed DEQ-20.

Circular DEQ-17 MONTANA STANDARDS FOR CISTERNS (WATER STORAGE TANKS) FOR INDIVIDUAL NON-PUBLIC SYSTEMS

REASON: The department proposes repealing current Circular DEQ-17 for the reasons described in the General Reason Statement. The requirements currently listed in DEQ-17 would be incorporated into Chapter 5 of proposed DEQ-20.

12. The proposed adoption of new Circular DEQ-20 is as follows:

Circular DEQ-20: STANDARDS FOR NON-PUBLIC WATER SYSTEMS

REASON: The department proposes adopting new Department Circular DEQ-20 to consolidate design criteria for individual, shared, and multiple-user water systems. Requirements for such systems are currently scattered among ARM Title 17, chapter 36, subchapter 3, Department Circular DEQ-3; Department Circular DEQ-11; and Department Circular DEQ-17. The proposed new Circular DEQ-20 would consolidate those requirements in a single circular, making the requirements easier for the public to understand and faster for the department to review. The primary purpose of creating a single circular to address individual, shared, and multiple-user water systems is that these water system types are all regulated under the Sanitation in Subdivisions Act, separate from public water supply rules and circulars, and should have a common location for referencing design criteria. Consultants and sanitarians who submit or review non-public water systems will benefit from the proposal to have one reference location for this information.

By consolidating those requirements in a single circular, the department also proposes, as discussed elsewhere in this notice of proposed rulemaking, to amend Circular DEQ-3 and repeal Circulars DEQ-11 and DEQ-17, as well as the following administrative rules: ARM 17.36.330, 17.36.331, 17.36.332, 17.36.333, 17.36.334, 17.36.335, and 17.36.336.

Multiple-user water systems and non-community public water supplies are currently reviewed under Circular DEQ-3. Multiple-user water systems were added to Circular DEQ-3 in 2006. Experience in administering the standards for water systems listed in current Circular DEQ has led the department to propose moving multiple-user water supply standards from current Circular DEQ-3 to include them in proposed Circular DEQ-20. Multiple-user systems differ from public systems, particularly in the fact that the department has no on-going relationship with multiple-user water systems for operation, sampling, or inspection. Multiple-user water systems should be approached from the standpoint that such systems will have less operation oversight throughout the life of the infrastructure. Such systems should not be reviewed and approved with high levels of complexity and required monitoring and therefore should have separate design standards. Design criteria for multiple-user systems are provided in chapter 3 of the proposed circular.

Only substantive changes from the existing regulations are discussed in paragraph form. Unless otherwise noted in this notice, the department proposes to maintain existing requirements for the same reasons those rules were initially adopted, and the department herein incorporates those previous statements of reasonable necessity.

Circular DEQ-20 Chapter 1 Application & General Standards

Proposed Circular DEQ-20	Existing Rule or DEQ-3 section	Substantive Change
1.1	17.36.101	No
1.2	DEQ-3 section 1.4	No, removed DEQ procedure

1.3	17.36.103, 17.36.330, and 17.36.332	No
1.3.1	17.36.103	No, the design report organizes existing requirements
1.3.2	17.36.332	No
1.3.3	17.36.330, 17.36.331	Yes, removed reference to DEQ-7
1.3.4,1.3.5	17.36.334	No
1.4.1	17.36.331(1)(f)	No
1.4.2.a and e	17.36.331, 17.36.323	Yes, added surface water and approved well drilling area and surface water influence information.
1.4.3	Section 3.2.5.7	No
1.5	17.36.333	No
1.6	17.36.106, 17.36.335	Yes, changes to grouting waivers
1.7	17.36.336	Yes, removed well infeasibility requirements in 17.36.336(2)
1.7.1	17.36.336(4)	Yes, no springs for multiple-user systems
1.7.2	17.36.336(6)	No

This proposed chapter transfers language from existing rules listed in ARM 17.36 and Circular DEQ-3 as shown in the table above. Some stylistic changes from the current rules have been made for readability. The proposed chapter also includes substantive changes as follows. Only the sections with substantive changes are itemized below.

Circular DEQ-20: 1.2 DEVIATIONS FROM STANDARDS The proposed section uses the same justification for deviations as DEQ-3 section 1.4. This proposed section does not include the deviation procedure, as listed in current Circular DEQ-3, because the procedure is not a requirement or a design standard. As proposed, the authority to allow requests for deviations from design standards, would match the criteria outlined in Circular DEQ-1 and DEQ-3.

Circular DEQ-20: 1.3.1 DESIGN REPORT The proposed section would add a design report requirement for the applicant to convey water system specifics, as currently required in ARM 17.36.103 for multiple-user water systems, in a central location. This new requirement is necessary to allow the department to more easily and efficiently locate the information needed to evaluate the water system.

Circular DEQ-20: 1.3.3 WATER QUALITY INFORMATION In this proposed section, the reference to Circular DEQ-7, Montana Numeric Water Quality Standards, currently listed in ARM 17.36.331(1)(b) would be removed. The department proposes removing the reference to DEQ-7 because it would require

non-public systems to meet quality requirements for more standards than are currently required for public water supply systems.

Circular DEQ-20: 1.4.2 LOCATION Location requirements currently listed in ARM 17.36.323 would be moved to this section. Multiple-user water supply systems may be reviewed by local health departments pursuant to ARM 17.36.116.

In section 1.4.2(a), the department proposes a substantive change to reflect changes to the requirement currently listed in ARM 17.36.323 that would allow a well to be drilled within an approved well drilling area. Allowing a well to be drilled within an approved well drilling area that meets all of the required setbacks would allow greater flexibility in siting wells while still maintaining the same public health protections.

In section 1.4.2(e) the department also proposes a substantive change from the requirement currently listed in ARM 17.36.331(f). Section 1.4.2(e) outlines specific criteria necessary for the reviewing authority to evaluate surface water influence in wells and necessary to protect public health.

Circular DEQ-20: 1.6 EXISTING SYSTEMS Two substantive changes to existing regulations are proposed in this section. The first proposed change would allow existing wells to be evaluated based on the regulations in place at the time it was drilled, regarding grouting depth and casing seal. This change would greatly reduce the need for grouting waivers, which are nearly always approved if the grouting depth meets the rules in place at the time of construction. This change would make reviews more efficient and save the applicant the cost associated with these waivers. This change responds to concerns raised by consultants, and Department stakeholders in the Subdivision Advisory Task Force and contracted county reviewers have been in favor of this proposed change. The second proposed change would add a description of the procedure currently used by reviewing authorities to evaluate well grouting depth by using well logs.

Circular DEQ-20: 1.7 ALTERNATE WATER SUPPLY SYSTEMS This proposed section includes criteria for alternate water supply systems currently listed in ARM 17.36.336, except that ARM 17.36.336(2), which requires proof that a well is not an available source, would be deleted. Wells are the preferred source in terms of cost and convenience. Experience in administering this rule has shown that applicants generally do not request alternate water supplies unless well sources are not feasible.

Circular DEQ-20 Chapter 2 Individual and Shared Water Systems

Proposed Circular DEQ-20	Existing Rule (ARM) or DEQ-3 section	Substantive Change
2.1	17.36.332, Section 3.2	No
2.1.1	17.36.332	Yes, changes to low flow wells
2.1.2	17.36.331(1)(a)	No

2.1.2.1	17.36.331(1)(d), (f)	No
2.1.2.2(a-h)	17.36.331(1)(b) and 17.336(1)(e)	Yes, added arsenic
2.1.2(g)	17.36.331(b)(i)	No
2.1.3	17.36.331(1)(e)	No
2.1.4	17.36.323	No
2.3.1	17.36.331	No
2.3.2	None	Yes, specific nitrate treatment requirements
2.3.3	None	Yes, specific to arsenic
2.3.4	None	Yes, but similar to DEQ-20 2.3.2 and 2.3.3

Circular DEQ-20: 2.1.1 QUANTITY As currently adopted, quantity requirements for individual and shared wells are listed in ARM 17.36.332. Additional criteria to this proposed section would be added to allow the use of a cistern and a lower producing well without a deviation. Utilizing water storage to provide for adequate quantities of water from low flowing wells is a waiver that is often approved within the parameters listed in this proposed section. Removing the need for a deviation in this proposed section would decrease costs and make reviews more efficient, while still ensuring that users have an adequate quantity of water. This proposed change has been supported by both consultants and contracted county reviewers.

Circular DEQ-20: 2.1.2 QUALITY Two substantive changes to the existing well quality criteria in ARM 17.36.331 have been proposed.

The first proposed change is that the department is providing additional specific information about evaluating surface water influence risk to implement the existing prohibition on water sources that are under the direct influence of surface water listed in ARM 17.36.331(1)(f). This would make the department's decisions more consistent and transparent. This proposed section requires surface water evaluations for individual or shared water systems with springs, irrigation galleries, and horizontal wells as a source.

The second proposed change is that arsenic would be added as a new required testing parameter. Arsenic is naturally occurring chemical prevalent in groundwater throughout the state. Geological formations may contain arsenic at detectable concentrations. EPA states that health effects from chronic exposure to arsenic include are fatal and non-fatal bladder and lung cancers as well as other non-carcinogenic diseases.

The economic impact of arsenic sampling would be minimal. Arsenic analysis was quoted as costing $15 per sample (July 2022). This small investment would protect public health by allowing the reviewing authority to require treatment to prevent the health effects of arsenic. This proposed change is intended to protect consumers by stating that reverse osmosis treatment for arsenic removal is required in the COSA. Also, if an individual or shared system considers expanding to become a community or non-transient non-community public system in the future,

the presence of elevated arsenic levels and the need for centralized arsenic treatment for public systems would provide systems with a better idea of the costs they may be facing.

Circular DEQ-20: 2.1.3 WELL CONSTRUCTION This proposed section contains the minimum depth criteria currently in ARM 17.36.331(1)(e). ARM 17.36.331(1)(e) makes it more difficult to use an existing well in a new submittal. The department chose to allow a lesser amount of grout without a deviation if the rules in place at the time the well was drilled would have allowed for the lesser amount of grout.

Circular DEQ-20: 2.3.2. NITRATE TREATMENT This section proposes new nitrate treatment standards for individual and shared wells. Although treatment for individual and shared wells has been allowed by the department on a case by case basis, standards for nitrate treatment have not been previously specified in rule or circular. Consistent treatment guidelines would provide simplified requirements based on the standards listed in current Circular DEQ-3. These proposed nitrate treatment standards would provide flexibility to develop water sources that require treatment. Nitrate treatment would only be only be allowed in accordance with this proposed section if no other water source is available. Professional Engineer design is encouraged but not required. The department has not required the services of a professional engineer for individual and shared systems in the past, due to the lack of complexity and the expense for these small systems. There are available treatment technologies that can be used and will treat nitrate adequately for private consumption. Ion exchange and adsorptive media treatment for nitrate may not be used for non-public water systems, because improperly operated or backwashed ion exchange and adsorptive media treatment processes have the potential to release nitrate at levels exceeding background source water concentrations into the water system, causing potential for a greater health threat.

Circular DEQ-20: 2.3.3. ARSENIC TREATMENT This proposed section would add a new requirement for arsenic treatment if arsenic levels are elevated above the maximum contaminant level of 0.10 mg/L. This section would require submittal of a treatment design. A statement requiring arsenic treatment would then be placed in the COSA. The cost of reverse osmosis treatment for arsenic in a single family home is generally less than $2000, which is minimal compared to the overall cost of development. This is necessary because of the health effects posed by arsenic consumption, as discussed above in the reason statement for Section 2.1.2. The department does not expect this to impose a significant burden on applicants. For individual and shared systems, point-of-use or point-of-entry reverse osmosis systems are often installed for aesthetic treatment, and this same type of treatment will also treat for arsenic. This section is less restrictive than the nitrate treatment section because arsenic is not an acute contaminant.

Circular DEQ-20: 2.3.4. OTHER CONTAMINATION The section proposes to recommend designing treatment based on Circular DEQ-1 Point-of-Use

treatment. Professional Engineer design is encouraged but not required for the reasons described under nitrate treatment.

Circular DEQ-20 Chapter 3 Multiple-User Water Systems

Proposed Circular DEQ-20	Existing Rule (ARM) or DEQ-3 section	Substantive Change
Chapter 3	DEQ-3 Chapter 3	Minimal, see specific sections
3.1	17.36.334(1 and 3), 17.36.333(1)(b)	Yes, change to connecting multiple-user systems
3.2	Section 3.2	No
3.2.1	Section 3.2.1	No
3.2.2	Section 3.2.2	Yes, changes to surface water influence
3.2.3	Sections: 3.2.3, 3.2.4	No
3.2.4 through 3.29	17.36.331(1)(a), Sections: 3.2.5 3.2.6,3.2.7.3,3.2.7.4	No
3.3	Chapter 4	No
3.4.1	Chapter 6	No
3.4.6, 3.4.7	Sections: 7.1, 7.2	No
3.4.8	Chapter 8	No

Circular DEQ-20: 3.1 GENERAL Much of the design criteria proposed for multiple-user water systems in proposed Chapter 3 is currently adopted in Circular DEQ-3. The department has proposed some minor changes to the requirements for design and testing of multiple-user water systems, with the addition of arsenic sampling and a shorter pump test required to show adequate quantity.

Multiple-user water supply systems may be reviewed by local health departments pursuant to ARM 17.36.116. Proposed chapter 3 would be worded to refer to any reviewing authority, as well as the department, to be consulted regarding well locations for multiple-user water systems.

This proposed section also includes changes to the existing requirement in ARM 17.36.333(1)(b)(ii) that multiple-user water systems be connected for greater reliability. The existing rule allows a waiver/deviation of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern. The department proposes to remove the economic impracticality standard to make the requirement more straight forward and less subjective. Department stakeholders in the Subdivision Advisory Task Force have been supportive of this proposed change.

Circular DEQ-20: 3.2.2 WATER QUALITY This proposed section provides water quality requirements for multiple-user water supply systems. These requirements are currently in ARM 17.36.331 and DEQ-3 Section 3.2.2. The department proposes specific criteria necessary for the reviewing authority to

evaluate surface water influence in wells and necessary to protect public health. The department proposes adding arsenic testing for the reasons listed under proposed section 2.1.2.

Circular DEQ-20: 3.2.4 TESTING AND RECORDS The department proposes to reduce the complexity of yield and drawdown testing for multiple-user wells currently presented in DEQ-3 Section 3.2.4. Public wells are required to provide 24 to 72 hours of testing. The proposed language for multiple-user wells limits the test at no more than 24 hours, with simplified data recording intervals. The reason for the change is to allow owners and consultants having little experience with yield and drawdown tests to be able to complete the yield and drawdown testing, which will capture the necessary information for pump selection and aquifer sustainability without requiring very specialized tools and software.

Circular DEQ-20: 3.4.6 Pressure Tanks Section 3.4.6 of proposed Circular DEQ-20 closely matches section 7.1 of the current version of Department Circular DEQ-3 for hydropneumatic pressure tank systems, with minor edits to ASME-rated tanks. The proposed language in this section would allow the use of hydropneumatic pressure tanks of any size if the hydrostatic pressure test requirements can be met. Most pressure tanks for multiple-user systems are small, often below the ASME code requirements. This change would allow for more flexibility in storage tank design for multiple-user systems.

Circular DEQ-20 Chapter 4 Development of Springs

Proposed Circular DEQ-20	Existing Rule (ARM) or DEQ-3 section	Substantive Change
Chapter 4	DEQ-11 and DEQ-10	No
4.1	None	Yes, springs not allowed for multiple-user systems
4.5	17.36(5)(a)	Yes, to match proposed changes to PWS-5

This chapter of the proposed circular combines criteria from current Department Circular DEQ-11 (Non-public springs) and Department Circular DEQ-10 (public springs). This chapter of proposed Circular DEQ-20 proposes to add detail regarding the required submittal information that was lacking previously. If Chapter 4 of DEQ-20 is adopted as proposed, then Circular DEQ-11 would be repealed.

The circular would not allow springs to be used for multiple-user water systems. Only individual and shared water systems may use such a water source. Testing and design requirements in this chapter are intended to minimize public health risks from the use of springs for water supply. However, springs still present a higher risk of contamination than a properly constructed well. Multiple-user water supply systems by definition provide water supply to a higher population than individual or shared water supply systems and present a higher risk to public

health if adequate protections are not provided. Unlike public water supply systems, the department would not have a regulatory mechanism to require annual sampling or inspection of multiple-user water supply systems. Additionally, public water supply systems that utilize springs are required to provide 4-log disinfection per DEQ-10. Routine sampling to ensure proper operation of disinfection equipment would not be possible with multiple-user water supply systems.

Circular DEQ-20 Chapter 5 Cisterns

Proposed Circular DEQ-20	Existing Rule (ARM) or DEQ-3 section	Substantive Change
Chapter 5	DEQ-17	No, except,5.2
5.1	17.36.336(6),17.36.332(1), 17.36.332(6)	No
5.2	17.36.332(4)	Yes, more specific about sealing and heating
5.7	DEQ-3, Chapter 6	No

The department proposes to transfer the design standards listed in current Department Circular DEQ-17, Montana Standards for Cisterns (Water Storage Tanks) For Individual Non-Public Systems, to chapter 5 of proposed Department Circular DEQ-20. The proposed chapter would be modified slightly from the DEQ-17 version, to encourage the installation of above ground cisterns in heated buildings for more consistent water quality over the life of the system. However, the option for buried, exterior installations of cisterns would remain for individual or shared water systems. If adopted, Department Circular DEQ-17 for non-public cistern design criteria would be repealed.

Circular DEQ-20: 5.1 GENERAL This section clarifies when the cistern criteria is used, compared to central storage reservoirs for multiple-user water systems, which must meet the criteria of Circular DEQ-1.

ARM 17.36.336(6) currently only addresses the use of a cistern served with hauled water. For individual and shared water supply systems, cisterns are often used to provide storage when the minimum flow requirements in ARM 17.36.332(1) cannot be met. ARM 17.36.332(6) allows "adequate storage" to be used to meet peak demands but does not provide a reference to the standards that storage needs to meet. The department proposes to specify in DEQ-20 Section 5.1 that the requirements for cisterns design apply for all individual and shared systems whether using hauled water or a low-flow well.

The department proposes to make the distinction between central storage reservoirs for multiple-user water systems and individual or shared cisterns that are provided water from a multiple-user well. Given the higher risk to public health if a single cistern is used to serve an entire multiple-user water supply system, the systems need to be designed in accordance with DEQ-1. This is consistent with the language proposed in DEQ-20 Section 4.7.3.

Circular DEQ-20: 5.2 PLACEMENT This section contains new recommendations to encourage above-ground storage tanks in heated structures, as such installations allow the structural and watertight integrity of the cistern to be monitored more easily than buried cisterns. This section also incorporates much of the existing placement criteria in Department Circular DEQ-17. Language was added to emphasize proper sealing of the cistern. The department proposes to include a requirement that above ground storage tanks must be installed within a heated structure to prevent freezing in the winter.

13. Copies of the proposed Circular DEQ-3, DEQ-4, and DEQ-20 may be viewed at the department's website using the following path: deq.mt.gov/water/programs/eng. Copies may also be obtained by contacting Jennifer Luparell at (406) 444-1801, or jennifer.luparell@mt.gov.

14. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-1388; or emailed to DEQSubDivRuleUpdate@mt.gov, no later than 5:00 p.m., January 23, 2023. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

15. Aaron Pettis, attorney for the department, has been designated to preside over and conduct this hearing.

16. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the department or may be made by completing a request form at any rules hearing held by the department.

17. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

18. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by mail on November 7, 2022.

19. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, transfer and amendment, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State December 13, 2022.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD, BOARD OF DENTISTRY, BOARD OF FUNERAL SERVICE, BOARD OF HEARING AID DISPENSERS, BOARD OF MASSAGE THERAPY, BOARD OF OCCUPATIONAL THERAPY PRACTICE, BOARD OF OUTFITTERS, BOARD OF PHARMACY, BOARD OF PLUMBERS, BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF PSYCHOLOGISTS, BOARD OF RADIOLOGIC TECHNOLOGISTS, BOARD OF REAL ESTATE APPRAISERS, BOARD OF SANITARIANS, BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, AND BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.101, 24.111.201, 24.111.202, 24.138.101, 24.138.201, 24.138.202, 24.147.101, 24.147.201, 24.147.202, 24.150.101, 24.150.201, 24.150.202, 24.155.202, 24.155.203, 24.165.101, 24.165.201, 24.165.202, 24.171.101, 24.171.201, 24.171.202, 24.174.101, 24.174.201, 24.174.202, 24.180.101, 24.180.201, 24.180.202, 24.183.101, 24.183.201, 24.183.202, 24.189.101, 24.189.201, 24.189.202, 24.204.101, 24.204.201, 24.204.202, 24.207.101, 24.207.201, 24.207.202, 24.216.101, 24.216.201, 24.216.202, 24.222.101, 24.222.201, 24.222.202, 24.225.101, 24.225.201, and 24.225.202, the transfer and amendment of 24.155.201, and the adoption of NEW RULE I, regarding organizational, procedural, and public participation rules	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, TRANSFER AND AMENDMENT, AND ADOPTION

TO: All Concerned Persons

1. On January 13, 2023, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment, transfer and amendment, and adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/83722284237, Meeting ID: 837 2228 4237, Passcode: 438998; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 837 2228 4237, Passcode: 438998.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasler, Department of Labor and Industry, Office of Legal Services, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359, facsimile (406) 444-4140, or Montana Relay Service at 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: In 2001, the Montana Legislature transferred professional and occupational licensing functions from the Department of Commerce (DOC) to the Department of Labor and Industry (department) via Senate Bill 445. With the transfer, the professional and occupational licensing boards and programs became allocated to the department for administrative purposes. Because the department had not previously promulgated public participation rules, and to maintain procedural continuity and afford licensees, license applicants, and the public the right of public participation per 2-3-103, MCA, all references to DOC's citizen participation rules remained in place in the boards' administrative rules. Following the transfer to the department, the professional and occupational licensing boards and programs have continuously operated to permit and encourage the public to participate in agency decisions that are of significant interest to the public.

In MAR Notice No. 24-2-390, the department adopted three new rules regarding public participation to fully comply with the requirements of 2-3-103, MCA, and meet the needs of the department, its customers, and the Montana public. The three rules were adopted exactly as proposed and became effective June 11, 2022.

Once the department's rules were effective, it became necessary to amend the licensing boards' rules to reference and incorporate them. The department determined it is reasonably necessary to combine the boards' related rule amendments into two rulemaking notices for timeliness, efficiency, and cost effectiveness. Implementing the rules simultaneously for as many boards as possible will reduce confusion regarding the rulemaking process and ensure that most boards operate under the same public participation rules at the same time. Twenty of the boards administratively attached to the department amended their rules effective September 23, 2022, to incorporate and align with the department's new public participation rules, in MAR Notice No. 24-101-395.

It is reasonably necessary to now amend the remaining 16 boards' rules that were not included in the first project. Where necessary, authority and implementation citations are amended to accurately reflect all statutes implemented through a rule and provide the complete sources of a board's rulemaking authority. Where additional specific bases for a proposed action exist, the individual board will identify those reasons immediately following that rule.

4. Several boards administratively attached to the department are proposing to adopt and amend specific board rules to align with the department's new public participation rules within this notice and correct references from the Department of Commerce to the Department of Labor and Industry. The proposed amendments, transfer and amendment, and new rule are presented in alphabetical order and grouped according to each board or program for clarity, readability, and ease of reference within this notice. The rules proposed to be amended, transferred and amended, or adopted provide as follows, stricken matter interlined, new matter underlined:

ALTERNATIVE HEALTH CARE BOARD

24.111.101 BOARD ORGANIZATION (1) The ~~Board of~~ Alternative Health Care Board ~~hereby~~ adopts and incorporates ~~by reference~~ the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-26-201, 37-27-105,~~ MCA
IMP: 2-4-201, MCA

24.111.201 PROCEDURAL RULES (1) The ~~Board of~~ Alternative Health Care Board ~~hereby~~ adopts and incorporates ~~by reference~~ the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-26-201, 37-27-105,~~ MCA
IMP: 2-4-201, MCA

24.111.202 PUBLIC PARTICIPATION (1) The ~~Board of~~ Alternative Health Care Board ~~hereby~~ adopts and incorporates ~~by reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-26-201, 37-27-105,~~ MCA
IMP: 2-3-103, MCA

ALTERNATIVE HEALTH CARE BOARD
SHEEHAN EDNIE-ROSEN, DEM,
PRESIDING OFFICER

BOARD OF DENTISTRY

24.138.101 BOARD ORGANIZATION (1) The ~~board of dentistry hereby~~ Board of Dentistry adopts and incorporates ~~for the practices of dentistry, dental hygiene and denturitry~~ the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, MCA
IMP: 2-4-201, ~~37-1-131, 37-4-205, 37-29-201,~~ MCA

24.138.201 PROCEDURAL RULES (1) The ~~board of dentistry hereby~~ Board of Dentistry adopts and incorporates ~~for the practices of dentistry, dental hygiene, and denturitry~~ the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, MCA
IMP: 2-4-201, ~~37-1-131, 37-4-205, 37-29-201,~~ MCA

24.138.202 PUBLIC PARTICIPATION (1) The ~~board of dentistry hereby~~ Board of Dentistry adopts and incorporates ~~for the practices of dentistry, dental hygiene and denturitry by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, MCA
IMP: 2-3-103, ~~37-1-131, 37-4-205, 37-29-201,~~ MCA

BOARD OF DENTISTRY
DIANE KLEMANN, R.D.H., PRESIDENT

BOARD OF FUNERAL SERVICE

24.147.101 BOARD ORGANIZATION (1) The ~~board of funeral service hereby~~ Board of Funeral Service adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-19-202,~~ MCA
IMP: 2-4-201, MCA

24.147.201 PROCEDURAL RULES (1) The ~~board of funeral service hereby~~ Board of Funeral Service adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-19-202,~~ MCA
IMP: 2-4-201, MCA

24.147.202 ~~CITIZEN~~ PUBLIC PARTICIPATION ~~RULES~~ (1) The ~~board of funeral service hereby~~ Board of Funeral Service adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-19-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF FUNERAL SERVICE
JIM AXELSON, PRESIDING OFFICER

BOARD OF HEARING AID DISPENSERS

24.150.101 BOARD ORGANIZATION (1) The Board of Hearing Aid Dispensers ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-16-202,~~ MCA
IMP: 2-4-201, MCA

24.150.201 PROCEDURAL RULES (1) The Board of Hearing Aid Dispensers ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-16-202,~~ MCA
IMP: 2-4-201, MCA

24.150.202 ~~CITIZEN~~ PUBLIC PARTICIPATION ~~RULES~~ (1) The Board of Hearing Aid Dispensers ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-16-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF HEARING AID DISPENSERS
MICHAEL SPINTI, PRESIDING OFFICER

BOARD OF MASSAGE THERAPY

24.155.201 (24.155.101) BOARD ORGANIZATION (1) The Board of Massage Therapy ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-33-405,~~ MCA
IMP: 2-4-201, MCA

REASON: This rule is being transferred because it is necessary to renumber the rule for consistency with the numbering of other professional licensing boards' organizational rules.

24.155.202 PROCEDURAL RULES (1) The Board of Massage Therapy ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-33-405,~~ MCA
IMP: 2-4-201, MCA

24.155.203 PUBLIC PARTICIPATION (1) The Board of Massage Therapy ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of this title ~~8~~.

AUTH: 2-3-103, ~~37-33-405,~~ MCA
IMP: 2-3-103, MCA

BOARD OF MASSAGE THERAPY
PEG HOLWICK, CHAIR

BOARD OF OCCUPATIONAL THERAPY PRACTICE

24.165.101 ~~ORGANIZATIONAL RULE~~ BOARD ORGANIZATION (1) The Board of Occupational Therapy Practice adopts and incorporates the ~~organization~~ organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-24-201,~~ MCA
IMP: 2-4-201, MCA

24.165.201 PROCEDURAL RULES (1) The Board of Occupational Therapy Practice adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-24-201,~~ MCA
IMP: 2-4-201, MCA

24.165.202 PUBLIC PARTICIPATION (1) The Board of Occupational Therapy Practice adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-24-201,~~ MCA
IMP: 2-3-103, MCA

BOARD OF OCCUPATIONAL THERAPY PRACTICE
TWYLLA KIRCHEN, OT, PRESIDING OFFICER

BOARD OF OUTFITTERS

24.171.101 BOARD ORGANIZATION (1) The Board of Outfitters ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry listed at chapter 1 of this title ~~of the Administrative Rules of Montana~~.

~~(2) It is the policy, intent, and purpose of the Board of Outfitters to provide quality regulatory functions and services to the profession it regulates and the public in order to promote, maintain, and preserve an ever-improving high degree of competence in the profession, satisfaction in the public, and an everlasting environment in which the profession operates.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The Board of Outfitters is striking (2) and moving the information on board purpose to New Rule I for better organization and clarity.

24.171.201 PROCEDURAL RULES (1) The Board of Outfitters ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title ~~of the Administrative Rules of Montana~~.

AUTH: 2-4-201, ~~37-47-201,~~ MCA
IMP: 2-4-201, ~~37-47-201,~~ MCA

24.171.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The Board of Outfitters ~~hereby~~ adopts and incorporates the ~~citizen~~ public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

~~(2) Dates, times, and places for meetings and other activities of the Board of Outfitters may be obtained by contacting the board office.~~

~~(3) Communications to the Board of Outfitters may be made to: Board of Outfitters, Department of Labor and Industry, 301 S. Park, P.O. Box 200513, Helena, Montana 59620-0513.~~

~~(4) In addition to any other means provided by law or rule, a person wanting to receive notice of board activities of significant interest to that person may contact the board office, in writing, and request that his or her name, address, and phone number be placed on the board's "mailing list" and designate those activities of interest. The request shall be effective until January 1 of the following year, at which time it may be renewed by written request annually.~~

AUTH: 2-3-103, ~~37-47-201,~~ MCA
IMP: 2-3-103, ~~37-47-201,~~ MCA

REASON: The board is striking information that is adequately addressed in standardized procedures and provided on the board's public web site.

NEW RULE I BOARD PURPOSE (1) It is the policy, intent, and purpose of the Board of Outfitters to provide quality regulatory functions and services to the professions it regulates and the public to promote, maintain, and preserve an ever-improving high degree of competence in the professions, satisfaction in the public, and an everlasting environment in which the professions operate.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: The board is adopting this new rule to set forth provisions on board purpose previously located in ARM 24.171.101.

BOARD OF OUTFITTERS
JOHN WAY, CHAIR

BOARD OF PHARMACY

24.174.101 BOARD ORGANIZATION (1) The ~~board of pharmacy hereby~~ Board of Pharmacy adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-7-201,~~ MCA
IMP: 2-4-201, MCA

24.174.201 PROCEDURAL RULES (1) The ~~board of pharmacy hereby~~ Board of Pharmacy adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-7-201,~~ MCA
IMP: 2-4-201, MCA

24.174.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The ~~board of pharmacy hereby~~ Board of Pharmacy adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-7-201,~~ MCA
IMP: 2-3-103, MCA

BOARD OF PHARMACY
TONY KING, PHARMACIST, PRESIDENT

BOARD OF PLUMBERS

24.180.101 BOARD ORGANIZATION (1) The Board of Plumbers ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-69-202,~~ MCA
IMP: 2-4-201, MCA

24.180.201 PROCEDURAL RULES (1) The Board of Plumbers ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-69-202,~~ MCA
IMP: 2-4-201, MCA

24.180.202 ~~CITIZEN~~ PUBLIC PARTICIPATION (1) The Board of Plumbers ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-69-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF PLUMBERS
JEFF GRUIZENGA, PRESIDING OFFICER

BOARD OF PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS

24.183.101 BOARD ORGANIZATION (1) The ~~board of professional engineers and land surveyors hereby~~ Board of Professional Engineers and Professional Land Surveyors adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-67-202,~~ MCA
IMP: 2-4-201, MCA

24.183.201 PROCEDURAL RULES (1) The ~~board of professional engineers and land surveyors hereby~~ Board of Professional Engineers and Professional Land Surveyors adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-67-202,~~ MCA
IMP: 2-4-201, MCA

24.183.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The ~~board of professional engineers and land surveyors hereby~~ Board of Professional Engineers and Professional Land Surveyors adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-67-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND
SURVEYORS
RON DRAKE, PRESIDING OFFICER

BOARD OF PSYCHOLOGISTS

24.189.101 BOARD ORGANIZATION (1) The ~~board of psychologists hereby~~ Board of Psychologists adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-17-202,~~ MCA
IMP: 2-4-201, MCA

24.189.201 PROCEDURAL RULES (1) The ~~board of psychologists hereby~~ Board of Psychologists adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-17-202,~~ MCA
IMP: 2-4-201, MCA

24.189.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The ~~board of psychologists hereby~~ Board of Psychologists adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, MCA
IMP: 2-3-103, MCA

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, Ph.D.,
PRESIDING OFFICER

BOARD OF RADIOLOGIC TECHNOLOGISTS

24.204.101 BOARD ORGANIZATION (1) The ~~board of radiologic technologists~~ Board of Radiologic Technologists adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-14-202,~~ MCA
IMP: 2-4-201, MCA

24.204.201 PROCEDURAL RULES (1) The ~~board of radiologic technologists~~ Board of Radiologic Technologists adopts and incorporates the

procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-14-202,~~ MCA
IMP: 2-4-201, MCA

24.204.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The ~~board of radiologic technologists hereby~~ Board of Radiologic Technologists adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-14-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF RADIOLOGIC
TECHNOLOGISTS
MIKE NIELSEN, RPA,
PRESIDING OFFICER

BOARD OF REAL ESTATE APPRAISERS

24.207.101 BOARD ORGANIZATION (1) The Board of Real Estate Appraisers ~~hereby~~ adopts and incorporates ~~by reference~~ the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

~~(2) The presiding officer shall preside at all meetings and shall perform such duties as the board may direct. At any meeting at which the presiding officer is absent, the vice presiding officer will serve as the presiding officer.~~

~~(3) The board shall hold an annual meeting prior to October 31 of each year for purposes of electing officers from among its members, each for a term of one year, or until a successor has been duly elected and qualified.~~

~~(4) Meetings shall be held, after reasonable notice, at the call of the presiding officer or a majority of the members of the board.~~

AUTH: 2-4-201, ~~37-54-105,~~ MCA
IMP: 2-4-201, MCA

24.207.201 PROCEDURAL RULES (1) The Board of Real Estate Appraisers ~~hereby~~ adopts and incorporates ~~by reference~~ the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-54-105,~~ MCA
IMP: 2-4-201, MCA

24.207.202 PUBLIC PARTICIPATION (1) The Board of Real Estate Appraisers ~~hereby~~ adopts and incorporates ~~by reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-54-105,~~ MCA
IMP: 2-3-103, MCA

BOARD OF REAL ESTATE APPRAISERS
GREGORY THORNQUIST,
PRESIDING OFFICER

BOARD OF SANITARIANS

24.216.101 BOARD ORGANIZATION (1) The Board of Sanitarians ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-40-203,~~ MCA
IMP: 2-4-201, MCA

24.216.201 PROCEDURAL RULES (1) The Board of Sanitarians ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-40-203,~~ MCA
IMP: 2-4-201, MCA

24.216.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The Board of Sanitarians ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-40-203,~~ MCA
IMP: 2-3-103, MCA

BOARD OF SANITARIANS
MEGAN BULLOCK, RS,
PRESIDING OFFICER

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

24.222.101 BOARD ORGANIZATION (1) The Board of Speech-Language Pathologists and Audiologists ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-15-202,~~ MCA
IMP: 2-4-201, MCA

24.222.201 PROCEDURAL RULES (1) The Board of Speech-Language Pathologists and Audiologists ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-15-202,~~ MCA
IMP: 2-4-201, MCA

24.222.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The Board of Speech-Language Pathologists and Audiologists ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~ARM Title 8~~ this title.

AUTH: 2-3-103, ~~37-15-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
HILLARY CARTER, AuD
PRESIDING OFFICER

BOARD OF VETERINARY MEDICINE

24.225.101 BOARD ORGANIZATION (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-18-202,~~ MCA
IMP: 2-4-201, MCA

24.225.201 PROCEDURAL RULES (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-18-202,~~ MCA
IMP: 2-4-201, MCA

24.225.202 PUBLIC PARTICIPATION ~~RULES~~ (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-18-202,~~ MCA
IMP: 2-3-103, MCA

BOARD OF VETERINARY MEDICINE
TIA NELSON, DVM, PRESIDENT

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Brandon Kirchgasler, Department of Labor and Industry, Office of Legal

Services, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail laborlegal@mt.gov, and must be received no later than 5:00 p.m., January 20, 2023.

6. The department and boards maintain list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the boards have determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 13, 2022.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.171.401, 24.171.502, 24.171.520, 24.171.601, 24.171.602, and 24.171.701 and the repeal of ARM 24.171.505 pertaining to the Board of Outfitters	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 13, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/87987277013
Meeting ID: 879 8727 7013, Passcode: 550469
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 879 8727 7013, Passcode: 550469

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., on January 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Dan Ritter, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 711; facsimile (406) 841-2305; or dlibsdout@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or use of outfitter assistants shall be as set forth below. The following fees are nonrefundable.

(a) New outfitter application and license. $1300

~~This fee includes the following costs, but does not include fees related to operations plan.~~

~~(i) application processing 350~~
~~(ii) examination 150~~
~~(iii) investigation 400~~

~~(iv) license 400~~

(b) Application for ~~amendment~~ adding endorsement to outfitter license. 450

~~This fee includes the following costs:~~

~~(i) application processing 300~~

~~(ii) examination 150~~

(c) through (g) remain the same.

~~(h) Fee for transfer of NCHU from each outfitter involved in the transfer 25~~

(i) and (j) remain the same but are renumbered (h) and (i).

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA
IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, MCA

REASON: The proposed fee elimination is needed to make fees commensurate with costs and to maintain board cash reserves that are compliant with statute. The department has upgraded many processes and technologies recently that have lowered the cost to administer the function of transferring NCHU.

24.171.502 OUTFITTER QUALIFICATIONS (1) An applicant for an outfitter license shall have the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the applicant to provide. In addition, the applicant shall have:

(a) for ~~a fishing~~ an outfitter applicant with a watercraft endorsement:

(i) a minimum of three years and 120 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients and using methods for pursuing fish~~, reduced by no more than 50 experience days for any waiver or combination of waivers~~ or game; or

(ii) a minimum of three years and 120 days of verified experience as a licensed outfitter, a licensed guide, or equivalent experience in another state guiding clients and using methods for pursuing fish ~~reduced by no more than 50 experience days for any waiver or combination of waivers~~ or game. All experience in this subsection (a)(ii) is subject to board approval; or

(b) for all other outfitter applicants:

(i) 100 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients in pursuing ~~the types of~~ fish or game and using methods for which licensure is sought by the applicant; or

(ii) 100 days of verified experience as a licensed outfitter, a licensed guide, or equivalent experience in another state guiding clients in pursuing ~~the types of~~ fish or game and using the methods for which licensure is sought by the applicant. All experience in this subsection (b)(ii) is subject to board approval.

(2) remains the same.

(3) Three days of experience may be waived by the board for every day of training completed by the applicant at a department-approved outfitter or guide school. The maximum number of days of experience that may be waived is 30. ~~All experience waivers are contingent upon the applicant completing the board's one-~~

~~day education program.~~ The department shall approve guide schools based on the following minimum criteria:

~~(a) The school must require written tests and participants must receive completion certificates.~~

~~(b) The school must include, at a minimum, instruction specific to adequate exposure to the knowledge needed to become an outfitter including but not limited to:~~

~~(i) advertising;~~

~~(ii) marketing and public relations;~~

~~(iii) maintaining rate and refund schedules;~~

~~(iv) client records and all paperwork for board and agency compliance;~~

~~(v) guiding techniques;~~

~~(vi) setting up of campsites;~~

~~(vii) practical woodsmanship;~~

~~(viii) knowledge of firearms;~~

~~(ix) field preparation of trophies;~~

~~(x) knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided;~~

~~(xi) board and other agency laws and requirements;~~

~~(xii) federal and state fish and game laws and regulations;~~

~~(xiii) knowledge of outfitting area;~~

~~(xiv) proper handling of all fish and game;~~

~~(xv) federal and Montana employment and wage requirements;~~

~~(xvi) preservation of ecosystem and maintaining present quality of wildlife and environment; and~~

~~(xvii) protection of the health, safety, and welfare of clients, other employees, and the public.~~

(a) Training for purposes of the waiver must be obtained through a provider and course approved by the department based upon the following minimum criteria:

(i) the provider must require a written test, and successful participants must be issued completion certificates; and

(ii) the provider program must include instruction on topics relevant to being an outfitter, including but not limited to any of the following topics: advertising; marketing and public relations; maintaining rate and refund schedules; client and other records for board and other agency compliance; guiding techniques; setting up of camp sites; practical woodsmanship; knowledge of firearms; field preparation of trophies; knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided; general board and other agency laws and requirements; federal and Montana fish and game laws and regulations; knowledge of outfitting area; proper handling of fish and game; federal and Montana employment and wage requirements; preservation of ecosystem; and maintaining present quality of wildlife and environment; and health, safety and welfare of clients, other public members, and employees.

~~(4) The board may waive up to 50 days of experience for an applicant if the applicant is purchasing an existing outfitter operation, is a family member being groomed for succession of an existing outfitter operation to take over as outfitter of record, or is a licensed outfitter seeking an additional license endorsement by~~

~~applying to add new services to the operations plan. An applicant is not qualified for a waiver under this provision unless~~:

~~(a) the applicant receives preapproval from the board for a training and instruction plan documenting, on forms prescribed by the department, how and in what capacity the applicant will work with the licensed outfitter who is providing the training;~~

~~(b) the applicant:~~

~~(i) has entered into a sales agreement with the selling outfitter for the purchase of the operation;~~

~~(ii) is named by the family in a documented succession plan agreement; or~~

~~(iii) is seeking operation plan expansion and has entered into a training and supervision agreement with a licensed outfitter;~~

~~(c) the applicant has entered into an agreement with the licensed outfitter that stipulates supervision of the applicant by the licensed outfitter during the 12-month period following board approval of the application. The licensed outfitter may assign or hire another licensed outfitter to provide training detailed within the training and supervision agreement;~~

~~(d) the licensed outfitter has a current, approved operations plan on file with the board;~~

~~(e) the applicant files an operations plan that is approved by the board; and~~

~~(f) the applicant has completed the board's one-day education program.~~

(4) The board may waive up to 50 days and one year of experience for an applicant seeking a fishing outfitter license with a watercraft endorsement, or 50 days for all other outfitter applicants.

(a) A waiver under this section (4) may be granted only to the following applicants:

(i) an applicant who is purchasing an existing outfitter operation;

(ii) an applicant being prepared for succession of an existing outfitter operation without purchasing; or

(iii) an applicant already licensed but seeking additional license endorsement.

(b) An applicant seeking a waiver under this section (4) must satisfy the following conditions:

(i) enter into a sales agreement or other arrangement with a licensed outfitter to receive all or part of an existing outfitting business that has an operations plan on file with the board;

(ii) obtain board preapproval of a 12-month plan of supervision for training and instruction documenting, on forms prescribed by the department, how and in what capacity the applicant will work with the licensed outfitter providing the training. The plan shall be an agreement between the applicant and either the outfitter of record for the existing outfitting business or a licensed outfitter designated by that outfitter of record for training purposes; and

(iii) obtain board approval of an operations plan for the applicant.

(5) All experience waivers granted under this rule shall be contingent upon the applicant completing the board's one-day education program within a time specified by the board.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The board finds it necessary to amend this rule as proposed in response to recent directives contained within Ch. 281, L. 2021 (SB 275). These changes reduce unnecessary administrative requirements consistent with the spirit of that legislation, and they will help add clarity to the rule. Also consistent with the spirit of the legislation, this amendment will remove obstacles to the transfer of an outfitter's business by allowing a larger class of outfitters to supervise an outfitter applicant seeking a waiver following completion of a board-approved plan. Likewise, it is time to delineate which outfitter functions or activities justify the need for the 120 days and three years of experience now being indiscriminately required of all fishing outfitters because, as applied, the current rule results in an unnecessary barrier to licensure and, consequently, to the transfer of an outfitter's business. The board has previously determined that some waterways and especially rivers are subject to constant change that presents new hazards that may be mitigated by ensuring outfitters are educated, tested, and endorsed in watercraft safety.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and ~~consists of the following:~~ includes the information required in 37-47-304(2)(c), MCA.

~~(a) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;~~

~~(b)~~ (a) ~~for fishing outfitters,~~ Fishing operations plans must include a summarization of the boundaries of the outfitter's fishing operation~~, provided in the following terms, except as otherwise provided in ARM 24.171.505:~~. If a fishing operations plan includes surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies), those surface waters must be described in detail, including the following information:

(i) through (iii) remain the same.

(iv) All other fishing operations plans may be described in detail pursuant to (2)(a), or an outfitter may summarize the boundaries of the outfitter's operations plan by referencing "all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA, and accessible by public access points not requiring a permit restricting commercial use issued by a state or federal agency(ies)."

~~(c)~~ (b) ~~for hunting outfitters~~ Hunting operations plans must include a summarization of the locations and boundaries of the outfitter's hunting operation, which is where the outfitter is authorized to operate, provided in the following terms:

(i) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board is consolidating all provisions related to operations plans, including fishing operations plans, into a single rule to clarify and simplify these

provisions for the reader. This amendment does not substantively change outfitter operation plan requirements.

24.171.601 GUIDE QUALIFICATIONS (1) An applicant for a guide license shall have:

(a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide ~~or professional guide~~;

(b) through (2) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The amendment is needed to clarify that all guide applicants are applying for a guide license. "Professional guide" is an antiquated reference to a repealed license type.

24.171.602 GUIDE LICENSE (1) ~~An applicant may apply for a guide license on forms provided by the department, and accompanied by the required fee.~~ The application must include ~~a signature of the endorsing outfitter confirming that, to the knowledge of the outfitter~~ all license requirements and the endorsement of a licensed outfitter, when required, attesting that, the ~~guide~~ applicant meets all ~~the~~ qualifications ~~of a guide~~ for licensure.

(2) and (3) remain the same.

~~(4) An applicant for a guide license who delivers a completed application and application fee to the board office will receive the license at that time.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The amendment is needed to clarify that all guide applicants must have the appropriate application materials. In circumstances where the materials require the confirmation of a licensed outfitter the amendment will allow the department to receive information and confirmation in a manner that does not require a signature but may be confirmed with more efficient technology. The proposal is further needed to remove internal processes and timelines that are outdated due in part to advancement in technology.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) through (6) remain the same.

(7) Category 2 NCHU may be used to serve category 3 NCHU clients.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, MCA

REASON: Reasonable necessity exists to amend this rule to permit outfitters who hold category 2 NCHU to serve category 3 clients. Currently, outfitters would be barred from serving clients in category 3, even if they had unused category 2 NCHU. This change does not increase the total amount of NCHU available but would increase flexibility to serve clients who are interested in multiple specie opportunities.

4. The rule proposed to be repealed is as follows:

24.171.505 FISHING OUTFITTER OPERATIONS PLAN

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: For clarity, the board is repealing this rule and incorporating the provisions into ARM 24.171.520.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., January 20, 2023.

6. An electronic copy of this notice of public hearing is available at https://boards.bsd.dli.mt.gov/outfitters/. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsdout@mt.gov; or by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 13, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 12, 2023, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89568682525?pwd=WHZYMWVOOHdpZlhiYUd3aWNzTEY0QT09, meeting ID: 895 6868 2525, and password: 822643; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 895 6868 2525, and password: 822643. Find your local number: https://mt-gov.zoom.us/u/kbHzPoel8.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>37.82.102 MEDICAL ASSISTANCE DEFINITIONS</u> (1) through (18)(c) remain the same.

<u>(d) With respect to abortion services reimbursable under the Montana Medicaid program, subsection (a) is limited by ARM 37.86.104(11).</u>

(19) through (35) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

<u>37.86.104 PHYSICIAN SERVICES, REQUIREMENTS</u> (1) through (7)(b) remain the same.

(c) In a case where the recipient is sterile before the hysterectomy or there is a life-threatening emergency that precludes the recipient from giving prior acknowledgment of receipt of hysterectomy information, the requirements in (7)(a) and (7)(b) do not apply. Instead, the physician who performed the hysterectomy either:

(i) and (ii) remain the same.

(8) Coverage of physician services for abortions is limited as follows:

(a) the life of the mother will be endangered if the fetus is carried to term; ~~or~~

(b) the pregnancy is the result of an act of rape or incest; or

(c) to the extent required by statute, when an abortion is a medically necessary service, even if the abortion does not meet the standard in (8)(a) and (9).

(9) Physician services for abortions, in a case of endangerment of the mother's life, must meet the following requirements in order to receive Medicaid reimbursement:

(a) and (10) remain the same.

(11) Abortion is a medically necessary service and eligible for coverage under the Montana Medicaid program when:

(a) a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed; or

(b) although it does not place the woman in danger of death unless an abortion is performed, a woman suffers from:

(i) a physical condition that would, as certified by a physician, be significantly aggravated by the pregnancy; or

(ii) a psychological condition that would, as certified by a physician, be significantly aggravated by the pregnancy.

(12) Physician services for abortions require prior authorization. If prior authorization is not obtained, due to an emergency situation or otherwise, a claim for payment for such physician services will undergo post-service, prepayment review. The request for prior authorization or the claim for payment must be accompanied by a completed and signed Physician Certification for Abortion Services Form (MA-037 form).

(13) Supporting documentation must be submitted for abortions covered under (8)(a) or (c). The following documentation must be submitted with the prior authorization request or with any claim for payment for which prior authorization was not received to support the determination of medical necessity:

(a) History and Physical, which should include (at a minimum) as it relates to the pregnancy:

(i) medical history, including age, current medications and allergies, number of times the patient has been pregnant and number of times she has had a live birth, last menstrual period, status and results of any pregnancy test, allergies, chronic illnesses, surgeries, behavioral health issues, smoking, substance abuse, and obstetric history;

(ii) brief review of systems to identify symptoms a patient may be experiencing;

(iii) the results of a physical examination, including vital signs, heart, lungs, abdomen, extremities, and estimate of gestational age (if imaging is not available);

(iv) results of laboratory tests (if available), including Rh factor, Hemoglobin, and Human Chorionic Gonadotropin;

(v) imaging (if available), to estimate gestational age;

(vi) documentation that the diagnosis of the physical or psychological condition leading to the medical necessity determination has been made by a medical professional qualified by education, training, and/or experience to make such diagnosis and that the woman is receiving care for such condition;

(vii) reason for the abortion procedure;

(viii) for medication/chemical abortions, documentation confirming review of contraindications, adequate patient education, and compliance with the requirements of the Physician-Related Services Manual;

(ix) treatment plan; and

(x) signed informed consent for the proposed abortion procedure.

(14) Physician services for abortions must be performed by a physician as defined in 37-3-102, MCA.

(15) Prior authorization is not required for treatments for incomplete abortions, miscarriages, or septic abortions.

(11) and (12) remain the same, but are renumbered (16) and (17).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.82.102 and ARM 37.86.104 with respect to when Medicaid pays for abortion services provided to beneficiaries of the program.

The following summaries explain the programmatic changes and the reasonable necessity for the proposed rule amendments.

Since the 1970s, there has been a bar on the use of federal funds to pay for abortions in the Medicaid program except in certain, limited circumstances, pursuant to the Hyde Amendment. The Hyde Amendment, an annual appropriations rider on the federal appropriations act that funds the U.S. Department of Health and Human Services, imposes limits on federal funding of abortion services. Under the current version of the Hyde Amendment, abortion services provided because of rape or incest or where the life of the mother is endangered by the pregnancy, are eligible for federal funds. The Montana Medicaid program cannot use federal funds or state matching funds to pay for abortions performed for any other reason.

Rules promulgated by the Montana Department of Social and Rehabilitation Services sought to limit Medicaid coverage of abortion services to those situations in which federal financial participation was available – i.e., those abortions subject to one of the Hyde Amendment exceptions. These rules were challenged in *Jeannette*

R. v. Ellery, No. BDV-94-811 (1st Jud. Dist., Lewis and Clark County). There, the district court noted that, under the MCA, the Montana Medicaid program was established for the purpose "of providing necessary medical services to eligible persons who have need for medical assistance." *Jeannette R. v. Ellery*, 1995 Mont. Dist. LEXIS 795, *14 (1st Jud. Dist., May 22, 1995). The court concluded that the "statute does not give the Department the authority to limit or eliminate those services enumerated under Section 53-6-101(2), MCA, unless there are insufficient funds to provide medical assistance for all eligible people." *Id.* at *16. Although another MCA provision directed the department to administer the program in accordance with the federal Medicaid statutes, the court said that such provision "is intended to tell the Department to make sure that the program provides at least those services included in Title XIX [the federal Medicaid Act] and to provide them in the manner directed by Title XIX. It does not tell the Department to limit those services to only those within Title XIX." *Id.* at *16-17.[1] The court stated that "[t]he legislature can pass its own Hyde Amendment if it wishes. However, it exceeds the power of the Department for it to limit the services provided by the legislature." *Id.* It, thus, concluded that the department had a statutory obligation to pay for medically necessary abortions in the Montana Medicaid program.[2] The court emphasized that its decision "does not conclude that the state of Montana must fund elective, nontherapeutic abortions." *Id.* at *28; *see also Id.* at *4 ("this case has nothing to do with indigent women who may seek an elective abortion. . . . Not at issue are nontherapeutic elective abortions. In other words, this case has nothing to do with abortions that are not medically necessary, as that determination is made by a physician.").

Following the decision in *Jeannette R.*, the department has covered abortion services where a physician has determined the procedure to be medically necessary. Because of the Hyde Amendment, these abortion services are funded by state general funds only. When Medicaid payment is sought for abortion services, the Montana Medicaid program requires the submission of the MA-037 form, Montana Healthcare Programs Physician Certification for Abortion Services, in addition to the claim form. The form provides three options for certification by the physician performing the abortion to support Medicaid coverage of the abortion: (1) the abortion is necessary to save the member's life; (2) the pregnancy resulted from rape or incest; or (3) the abortion is medically necessary, but the member's life is not endangered, with space to provide an optional explanation. The form does not require the submission or attachment of additional documents for any of the three options for Medicaid coverage certification.

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[1] Case law, including a decision by the *Jeannette R.* court, has held that state Medicaid programs have to cover all abortions covered by federal Medicaid.

[2] While acknowledging that he did not need to reach the issues, the district court also concluded that the regulations violated the Montana Constitution's privacy and equal protection provisions. However, there is good reason to believe that such rulings are mere dicta under principles of constitutional avoidance.

The 2021 Montana Legislature directed the department to review and report on the history, utilization data, policies, rules, and definitions for Medicaid-reimbursed abortions. *See* H.B. 2. During the September 2021 meetings of the Interim Budget Committee for Section B and the Children, Families, and Health and Human Services Interim Committee, the department presented a summary of current laws, rules, policies, procedures, and claims estimates associated with Medicaid-reimbursed abortions titled "Abortion Services and Montana Medicaid." The Interim Committees requested that the department conduct an in-depth review of abortion claims paid by Montana Medicaid, as well as a legal review of the current state of the law concerning Medicaid-reimbursed abortions. As a result of this request, the department, using the services of a contractor, reviewed all Medicaid-reimbursed abortions for which the department claimed federal financial participation for the 10-year period, July 2011 – June 2021 (6 abortions), as well as 10% of the abortions paid for by Montana Medicaid, using only state funds, based on medical necessity for the 3-year period, July 2019 – June 2021 (79 claims for SFY 2019, 67 claims for SFY 2020, and 75 claims for SFY 2021). In September 2022, the department presented the results of this analysis of Montana Medicaid-funded abortion services to the Interim Budget Committee for Section B. The analysis concluded that the information submitted on or with the MA-037 form lacks sufficient information to support medical necessity. With respect to medically necessary abortions, the department's contractor reported that the MA-037 forms contained a brief narrative, but only 11.31% (25 claims, submitted by one provider), contained additional documentation. Such additional documentation typically correlated with the vague medical condition of "complications of unintended pregnancy," or an assessment of the situation, rather than documentation to support an actual complication or disease, other than the pregnancy itself. The four conditions routinely indicated on the MA-037 form were (1) pain and suffering (47.5%); (2) emotional stability (24.43%); (3) mental and physical health (9.05%); and (4) complications of unintended pregnancy (19.00%). Ninety claims reviewed related to medication/chemical abortions, but only 10 of such claims included documentation that established that the requirements of the Physician-Related Services Manual for such abortions were met.

The department's contractor recommended that Medicaid-funded abortion claims should be supported by documentation, including a brief history and physical examination with evidence of the medical diagnosis and/or condition necessitating abortion, an estimate of gestational age, and corroborating laboratory and imaging studies that support the medical diagnosis or patient condition, with such additional information being submitted on (or with) the MA-037 form.

The results of the in-depth review of Medicaid-reimbursed abortion claims have caused the department grave concern:

- If Medicaid-reimbursed abortion claims were audited, by the federal government or otherwise, the department would not have sufficient documentation to support that the abortions meet the criteria for payment by

the Medicaid program, regardless of whether federal financial participation is available pursuant to the Hyde Amendment.

- With respect to medically necessary abortions, funded only by State general fund: The consistent lack of documentation, coupled with the conditions routinely provided on the MA-037 forms as the basis for medical necessity, lead the department to reasonably believe that the Medicaid program is paying for abortions that are not actually medically necessary, but are, in fact, elective, nontherapeutic abortions.

Faithfulness to the scope of the Medicaid program as established by the legislature and to Montana taxpayers and the state funds justifies the department's decision to require the submission of documentation to support Medicaid payment for abortion services and, with respect to abortion, to provide greater specificity as to what constitutes medically necessary services and the documentation needed to support such abortion payment claims, as set forth in further detail below. Such requirements are not uncommon and are applied to other Medicaid-reimbursed services to ensure program integrity.

37.82.102(18)(d)
As indicated above, the department proposes to provide greater specificity as to what abortions constitute medically necessary services. So that all of the rules concerning Medicaid coverage of abortion services are located in one rule, the department proposes to include, in the definition of "medically necessary services" in this rule, a cross reference to ARM 37.86.104 where the department proposes to provide such greater specificity.

37.86.104(7)(c), (9)
The department proposes to make minor, non-substantive punctuation changes to these provisions.

37.86.104(8)
ARM 37.86.104(8) identifies the situations in which the Montana Medicaid program covers abortion services for Medicaid beneficiaries. The rule currently lists those covered by the Medicaid program as a result of the Hyde Amendment: where the pregnancy endangers the life of the mother or where the pregnancy results from rape or incest. The department proposes to amend this provision to indicate that, when the Montana Medicaid statute requires it (as the district court in *Jeannette R.* held that the statute currently does), the Montana Medicaid program also covers medically necessary abortions even if the life of the mother is not endangered. This is merely a codification of current practice by the Montana Medicaid program as a result of the decision in *Jeannette R.*

37.86.104(11)
As noted above, the Montana legislature established the Montana Medicaid program "for the purpose of providing necessary medical services to eligible persons who have need for medical assistance." 53-6-101, MCA. The district court in *Jeannette R.* determined that this required coverage of medically necessary abortions even

where the life of the mother would not be endangered if the pregnancy was carried to term. The court, however, stated that "[i]t is clear that the state need not fund nontherapeutic, elective abortions." To ensure that the Medicaid program is only covering medically necessary abortions, not providing payment for abortions that are, essentially, elective, nontherapeutic abortions, and using appropriate funds, the department proposes to provide greater specificity as to when an abortion is medically necessary. Namely, the department proposes that abortion is a medically necessary service and eligible for coverage under the Montana Medicaid program when: (a) a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed; or (b) although it does not place the woman in danger of death unless an abortion is performed, a woman suffers from a physical or psychological condition that would, as certified by a physician, be significantly aggravated by the pregnancy. The department proposes to further strengthen the requirement of medical necessity by requiring, in ARM 37.86,104(13), documentation that the woman was diagnosed with the condition by a medical professional qualified by education, training, and/or experience to make such a diagnosis and that she is being treated for such condition.

37.86.104(12)
Beginning with abortion services provided on or after the effective date of the final rule, the department proposes to require prior authorization on abortion services to ensure covered services are consistent with the Hyde Amendment (where the pregnancy endangers the life of the mother or the pregnancy results from rape or incest), or are medically necessary and the appropriate funds are utilized. Requests for authorization must be submitted electronically to the department's contracted Quality Improvement Organization through the Qualitrac Portal. The department recognizes, however, that there may be instances where a physician seeks Medicaid reimbursement for abortion services where – as a result of an emergency situation or otherwise – prior authorization was not obtained. In such circumstances, the department proposes to require post-service, prepayment review of the claim for payment for the abortion service for the same reasons. The department further proposes that any request for prior authorization or any claim for payment for abortion services that did not receive prior authorization be accompanied by a completed and signed MA-037 form.

The department notes that it is not unusual for prior authorization to be required for certain services. While the department has exercised its discretion and is not enforcing certain prior authorization requirements during the COVID-19 public health emergency, prior authorization is required for Medicaid coverage of a large number of medical services and medical products, including:

- Wheel chairs.
- Hearing aids.
- Physician administered drugs, such as Sublocade, a medication for opioid use disorder.

- Breast augmentation.
- Transcranial magnetic stimulation, a procedure for treatment resistant depression.
- Out of state inpatient hospital stays.

It is the department's practice to require prior authorization especially when there may be questions as to whether the service is medically necessary. For example, as provided in ARM 37.86.104(3), prior authorization is required for physician services for conditions or ailments that are generally considered cosmetic in nature. With respect to such services, the department requires prior authorization (and limits Medicaid coverage to such cases "where it can be demonstrated that the physical and psycho-social wellbeing of the recipient is severely affected in a detrimental manner by the condition or ailment").

Here, in order to ensure that Montana Medicaid is only paying for abortions where required by federal or state statutory law – and, thus, is not paying for elective, nontherapeutic abortions consistent with case law – the department proposes to require prior authorization or post-service, prepayment review of claims for such services.

37.86.104(13)
Where Medicaid payment is sought for an abortion based on medical reasons – whether the physician concludes that the life of the mother will be endangered if the unborn child is carried to term or that the abortion is otherwise medically necessary – the department proposes to require certain clinical documentation, in addition to the completed and signed MA-037 form, in order to document and justify the physician's conclusion and support appropriate reimbursement.[3]

The department proposes to require documentation of the woman's medical history and physical condition, including (1) medical history; (2) brief review of systems to identify symptoms a patient may be experiencing; (3) the results of a physical examination, including estimate of gestational age (if imaging is not available); (4) results of laboratory tests (if available); (5) imaging (if available), to estimate gestational age; (6) documentation that the diagnosis of the physical or psychological condition leading to the medical necessity determination has been made by a medical professional qualified by education, training, and/or experience to make such diagnosis and that the woman is receiving care for such condition; (7) reason for the abortion procedure; (8) for medication/chemical abortions, documentation confirming review of contraindications, adequate patient education,

[3] The department is not proposing to require documentation in addition to the completed and signed MA-037 for abortions in which Medicaid coverage is sought because the pregnancy is a result of rape or incest. However, the department will closely monitor such claims and take appropriate action if the number of claims for coverage of abortion because of rape or incest spikes after the proposed changes are adopted and implemented and the rates for such abortions exceed historical rates.

and compliance with the requirements of the Physician-Related Services Manual; (9) treatment plan; and (10) signed informed consent for the proposed abortion procedure.

The department proposes to require this level of documentation because it is consistent with the level of recordkeeping required as a condition for coverage under U.S. Centers for Medicare & Medicaid Services rules for procedures carried out at ambulatory surgical centers and is the minimum standard documentation that would normally be requested with respect to procedures if a determination of medical necessity is to be made. The department proposes to require documentation that the diagnosis of the physical or psychological condition leading to the medical necessity determination has been made by a medical professional qualified by education, training, and/or experience to make such diagnosis and that the woman is receiving care for such condition. This proposed requirement would help ensure the accuracy of the diagnosis on which the conclusion of medical necessity rests and, thus, provide assurance that the Montana Medicaid program is not paying for elective, non-therapeutic abortions.

The proposed documentation would also establish that the safety and wellbeing of the female patient has been considered. The assessment, including physical examination and imaging (with a determination of gestational age) is especially important when medication/chemical abortions are being performed.

As with the proposed requirement for prior authorization or post-service, prepayment review, it is not unusual for the department to require providers to submit additional documentation, clinical or otherwise, to support their claim that particular services are covered by Medicaid and that the particular claim should be paid. For example, the department requires the submission of documentation to support claims for Medicaid payment of the following services:

- Targeted case management.
- Out-of-state inpatient hospital stays.
- Certain prescription medications.
- Orthodontia.
- Hearing aids.
- Ambulance transports.
- Botox injections.

37.86.104(14)

States cannot claim federal financial participation for abortion services unless a physician certifies in writing that, in their professional opinion, the life of the mother would be endangered if the pregnancy were carried to term, or that the abortion is necessary as a result of rape or incest. 42 C.F.R. § 441.201 defines physician as a doctor of medicine or osteopathy who is licensed to practice in the state. To ensure compliance with 42 CFR Part 441 (Subpart E – Abortions), the department proposes

to limit abortion services to those services rendered by a physician as defined in 37-3-102, MCA.

The department recognizes that there is ongoing litigation on whether medical practitioners other than physicians may lawfully perform abortions in the State of Montana. That is a different issue than whether the abortion is eligible for coverage and payment under the Montana Medicaid program. To comply with federal and state statutes, to protect the integrity of the Medicaid program, and to protect the health and safety of Medicaid beneficiaries, the Medicaid program can limit Medicaid payment to services provided by certain types of health care providers.

37.86.104(15)
The requirements outlined in ARM 37.86.104(12) through 37.86.104(14) do not apply to treatment for incomplete abortions, miscarriages, or septic abortions.

Fiscal Impact

The department estimates that the proposed rule amendments will result in additional state fund expenditures in costs for utilization review of prior authorization or post-service, prepayment review documentation. The department believes that such expenditures are necessary to ensure that the Montana Medicaid program only covers abortion services where required by federal or state law and that it is not covering elective, nontherapeutic abortions.

The proposed rule amendments would preclude mid-level providers from providing abortion services. The department anticipates cases previously handled by mid-levels will shift to physicians, whose reimbursement rate is higher than mid-levels, slightly increasing costs to the department.

5. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 20, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

There are two clinics with fewer than 50 full-time employees that provide abortions in Montana for which reimbursement is sought from the Montana Medicaid program. The probable impact of the proposed rule amendments will require additional time for the clinic to provide the necessary prior authorization/post-service, prepayment review documentation and require the clinic to use physicians to provide Medicaid-reimbursed abortion services, rather than mid-level practitioners. There are no alternative methods that may be reasonably implemented to minimize or eliminate the effects of adopting the proposed rule changes.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ PAULA M. STANNARD
Paula M. Stannard
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State December 13, 2022.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Valley Garden Fishing Access Site on the Madison River in Madison County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Valley Garden Fishing Access Site:

(a) There is ice gouging and there are ice jams on the Madison River that have caused water and ice to channel through multiple portions of the fishing access site.

(b) The combination of dangerous conditions includes gouging ice, ice-covered roadways and accessways, and the potential for flooding, ultimately rendering unsafe conditions for pedestrian and vehicle travel.

(c) Persons recreating at the fishing access site would be at risk of unsafe roadways, injury, or drowning.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 24 of the 2022 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Crissy Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective December 7, 2022, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I VALLEY GARDEN FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Valley Garden Fishing Access Site is located along the Madison River in Madison County.

(2) The Valley Garden Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will remain in effect until the department determines that the site is again safe for public occupancy. This will depend on the extent and the duration of the ice jams and gouges on the river causing flooding into the fishing access site. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Crissy Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than January 20, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on December 7, 2022.

/s/ Mike Volesky
Mike Volesky
Chief of Operations
Department of Fish, Wildlife and Parks

/s/ Kathleen Jensen
Kathleen Jensen
Rule Reviewer

Certified to the Secretary of State December 7, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.681 pertaining to agricultural commodity prices and values	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 4, 2022, the Department of Revenue published MAR Notice No. 42-1063 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2179 of the 2022 Montana Administrative Register, Issue Number 21.

2. On November 28, 2022, the department held a public hearing to consider the proposed amendment. The only attendee at the hearing was Robert Story, Executive Director of the Montana Taxpayers Association (Montax), who provided oral comments.

3. The department has amended ARM 42.20.681 as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Story questioned the consistency of the prices and values in the rule because grazing fees in (1)(c) increased nearly $1.00, the productivity average in (3) decreased, albeit slightly, and the carrying capacity for eligible grazing land in (7) increased - not decreased - from 23 to 25 AUMs. Mr. Story contends that as productivity values increase, carrying capacity should decrease.

RESPONSE 1: The department appreciates Mr. Story's comments and responds that each of the three values in the valuation or classification of agricultural land--commodity prices, average productivity, and carrying capacity ratings--are developed from nonrelated data and are not dependent or interrelated in their use by the department. While all pertain to the livestock industry, one is based on the fees to graze the livestock, one on the acres classified as grazing land, and the last on livestock sales. Given this lack of relationship or interdependency of the sources and uses of these values, which are explained below, relational conclusions are not supported.

Grazing fees are used in the valuation of agricultural grazing land; the productivity average is used in the valuation of nonqualified agricultural land and nonproductive patented mining claims. The carrying capacity for agricultural eligibility is a requirement for meeting classification and not used for valuation.

The commodity price used for valuing grazing land is the ten-year Olympic average of private grazing fees from the USDA Montana Agricultural Statistics

Service for years 2012 to 2021 as determined by 15-7-201(5)(d), MCA. These increased from the Olympic average for the previous ten-year data set from the same source.

The average productivity of grazing land in the state decreased slightly due to a change of acreage in the grazing classification. This productivity is used in the valuation of nonqualified agricultural land and nonproductive patented mining claims.

Grazing land is valued based on its specific productivity rating, not the average productivity, so the average does not affect the valuation of acres classified as grazing land.

The minimum number of animal unit months carrying capacity must equate to $1500 in annual gross income as determined by the Montana State University-Bozeman College of Agriculture as required in 15-7-202(3), MCA. This calculation is based on the sales prices of cows and calves. Several different livestock operation scenarios are analyzed as described in the Montana State University AUM Report which can be found at mtrevenue.gov on the Agricultural Land Valuation Advisory Committee web page.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 13, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.155 and 42.22.1311 pertaining to 2023 Personal Property Depreciation Schedules and Trend Tables	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 4, 2022, the Department of Revenue published MAR Notice No. 42-1065 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2186 of the 2022 Montana Administrative Register, Issue Number 21.

2. On November 28, 2022, the department held a public hearing to consider the proposed amendment. The only attendee at the hearing was Robert Story, Executive Director of the Montana Taxpayers Association (Montax), who provided oral comments. Mr. Story also provided written comments on behalf of Montax.

3. The department has amended ARM 42.21.155 and 42.22.1311 as proposed. The 2023 version of the Personal Property Depreciation Schedules and Trend Tables publication (publication) has been adopted as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Story and Montax commented their concern with the trend factors described in the publication because it appears that there will be significant increases in the trended percent good factors in almost all the types of equipment across all the years of the tables. By Montax calculations, the trended good percentages increased by 15 to 20% over last year. Montax understands there has been significant inflation over the past year, but that trend seems to be levelling out. Regardless, general inflation has been around 8% yet the trend factors are increasing at double that rate or more.

Montax encourages the department to re-evaluate its sources of data and to determine if they are accurately reflecting the actual changes in equipment values.

RESPONSE 1: The department thanks Mr. Story and Montax for their comments and concerns regarding the significant increases in the trended percent good factors proposed in the publication.

The department agrees with Mr. Story and Montax that the general rate of inflation is currently around 8 percent. However, increases in personal property valuation (as reflected by the increases of trended percent good factors) are generally not comparable to general inflation. General inflation is the average

change over time in the prices paid by urban consumers for a market basket of consumer goods and services, where trended percent good factors do not reflect averages. The equipment category data used in the Marshall and Swift Valuation Guide is also consistent with the department's observations in other property classes which were reported to the department's legislative oversight committee (that residential values and commercial property values increased 43 percent and 16.87 percent, respectively). While the department empathizes with taxpayers who realize the effects of inflationary increases in their personal property taxes, the department cannot fault the data that is reported and the conclusions adopted in the Marshall and Swift Valuation Guide and the department lacks statutory authority to mitigate these potentially adverse effects.

As to the request to seek other valuation data sources, the department has used the Marshall and Swift Valuation Guide for its data source for trend factors for several years because it is one of the most respected references in both private and public sector property valuation. The guide is used in more than 30 states and Canada and has been written into many state's statutes because of its reliability. The department cannot readily adopt any alternate resource which would provide any immediate relief. Any discussions about a change in the department's primary valuation data resource would involve long-range planning with all affected stakeholders, assuming there is another comprehensive source as reliable as the Marshall and Swift Valuation Guide.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 13, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2022. This table includes notices in which those rules adopted during the period June 24, 2022, through December 9, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-2-624 Public Meetings, p. 640, 1312
2-5-628 Department Responsibilities – Delegation of Purchasing Authority – Small Purchases or Limited Solicitations of Supplies and Services – Sole Source Procurement – Exigency Procurements – Minimum Refund – Exceptions to Minimum Refund Rule, p. 1344, 1789
2-59-626 Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Mortgage Loan Originators, p. 944, 1690
2-59-627 Semiannual Assessments - Supervisory Fess for Banks and Credit Unions, p. 856, 1656
2-59-630 Activities Requiring a License, p. 1352, 1790
2-59-632 Banking Definitions, p. 1355, 1791

(Public Employees' Retirement Board)
2-43-631 Actuarial Rates and Assumptions, p. 1349, 1689

(State Lottery and Sports Wagering Commission)
2-63-625 Procedural Rules, p. 1357, 1792

AGRICULTURE, Department of, Title 4

4-22-275 Hemp, p. 947, 1657
4-22-276 Wheat and Barley Assessment and Refunds, p. 1786

STATE AUDITOR, Office of, Title 6

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in November 2022 appear. Potential vacancies from January 1, 2023 through January 31, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2022.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Advisory Council on Aging			
Ms. Roberta Bigback Lame Deer Qualifications (if required): Public Rep	Governor	Reappointed	11/7/2022 7/1/2025
Mr. Jerry Thex Ashland Qualifications (if required): Public Rep	Governor	Marianne Roose	11/7/2022 7/1/2025
Mr. Al Ward Helena Qualifications (if required): Public Rep	Governor	Reappointed	11/7/2022 7/1/2025
Alternative Health Care Board			
Ms. Sheehan Edine-Rosen Victor Qualifications (if required): Midwife	Governor	Reappointed	11/1/2022 10/1/2026
Board of Nursing Home Administrators			
Ms. Kelly Bilau Kalispell Qualifications (if required): Nursing Home Administrator	Governor	Ryan Tooke	11/2/2022 6/1/2027

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Nursing Home Administrators Cont.			
Mr. Mitch Hartley	Governor	Bill Bronson	11/2/2022
Great Falls			6/1/2027
Qualifications (if required): Experience with care of chronically ill or infirm aged patients			
Mrs. Carla Neiman	Governor	Reappointed	11/2/2022
Plains			6/1/2027
Qualifications (if required): Experience with care of chronically ill or infirm aged patients			
Board of Pharmacy			
Ms. Gail Tronstad	Governor	Marian Jensen	11/7/2022
Helena			7/1/2027
Qualifications (if required): Public Member			
Burial Preservation Board			
Mr. Michael Black Wolf	Governor	Reappointed	11/7/2022
Hays			9/1/2024
Qualifications (if required): Fort Belknap Indian Community Rep			
Mr. Conrad Fisher	Governor	Reappointed	11/7/2022
Billings			9/1/2024
Qualifications (if required): Northern Cheyenne Tribe Rep			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Burial Preservation Board Cont.			
Mr. Andy LeBrun	Governor	Reappointed	11/7/2022
Red Lodge			9/1/2024
Qualifications (if required): Montana Coroners' Association Rep			
Mr. Duane Reid	Governor	Richard Parenteau	11/7/2022
Elmo			9/1/2024
Qualifications (if required): Little Shell Tribe Rep			
Commission on Community Service			
Mr. Donald Jones	Governor	Juanita Vero	11/7/2022
Billings			7/1/2025
Qualifications (if required): Local Government Rep			
Mr. James Larson	Governor	Reappointed	11/7/2022
Billings			7/1/2025
Qualifications (if required): Labor Organization Rep			
Wheat and Barley Committee			
Mr. Max Cederberg	Governor	Reappointed	11/1/2022
Turner			6/1/2025
Qualifications (if required): Democrat farmer with income from District II			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Wheat and Barley Committee Cont.			
Mr. Keven Bradley	Governor	Llew Jones	11/1/2022
Cut Bank			6/1/2025

Qualifications (if required): GOP Farmer with income from District III

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
8th Judicial District		
Mr. John Parker, Great Falls	Governor	1/1/2023
Qualifications (if required): none specified		
Board of Aeronautics		
Mr. Daniel Hargrove, Billings	Governor	1/1/2023
Qualifications (if required): Actively engaged in aviation education in this state		
Mr. Thomas John Schoenleben Jr., Stevensville	Governor	1/1/2023
Qualifications (if required): Representing the general public		
Mr. John Maxness, Helena	Governor	1/1/2023
Qualifications (if required): Active fixed base operator		
Board of Behavioral Health		
Ms. Carol Staben Burroughs, Bozeman	Governor	1/1/2023
Qualifications (if required): Licensed professional counselor		
Ms. Laura Dever, Great Falls	Governor	1/1/2023
Qualifications (if required): General public not engaged in social work		
Ms. Mona Sumner, Billings	Governor	1/1/2023
Qualifications (if required): Licensed addiction counselor		
Ms. Erin Elizabeth Williams, Missoula	Governor	1/1/2023
Qualifications (if required): Licensed professional counselor		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Chiropractors		
Dr. Julie Murack, Conrad	Governor	1/1/2023
Qualifications (if required): Licensed Chiropractor		
Board of Crime Control		
Representative Angela Russell, Lodge Grass	Governor	1/1/2023
Qualifications (if required): Public Representative		
Mr. Richard Kirn, Poplar	Governor	1/1/2023
Qualifications (if required): Tribal Government Representative		
Ms. Beth McLaughlin, Helena	Governor	1/1/2023
Qualifications (if required): Judiciary Representative		
Hon. Brenda C. Desmond, Missoula	Governor	1/1/2023
Qualifications (if required): Judiciary Representative		
Mr. Peter B. Ohman, Bozeman	Governor	1/1/2023
Qualifications (if required): Criminal Justice Agency		
Mr. Derek J. VanLuchene, Helena	Governor	1/1/2023
Qualifications (if required): Public Representative		
Director Reginald D. Michael, Helena	Governor	1/1/2023
Qualifications (if required): Law Enforcement Representative		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Crime Control Cont.		
Mrs. Laurie Nelson Barron, Whitefish Qualifications (if required): Educator Representative	Governor	1/1/2023
Honorable Kaydee Snipes Ruiz, Havre Qualifications (if required): Judiciary Representative	Governor	1/1/2023
Ms. Rhonda Lindquist, Helena Qualifications (if required): Criminal Justice Agency	Governor	1/1/2023
Board of Environmental Review		
Ms. Hillary Hanson, Kalispell Qualifications (if required): Public member	Governor	1/1/2023
Ms. Melissa Hornbein, Helena Qualifications (if required): Public member	Governor	1/1/2023
Dr. David Lehnherr, Red Lodge Qualifications (if required): Expertise or background as a county health officer	Governor	1/1/2023
Mr. Jeremiah C. Lynch, Missoula Qualifications (if required): Public Member	Governor	1/1/2023
Ms. Stacy Aguirre, Glendive Qualifications (if required): Public member	Governor	1/1/2023

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Horse Racing		
Mr. Barry Stang, Helena	Governor	1/1/2023
Qualifications (if required): District 4		
Mr. Ralph Gary Young, Columbus	Governor	1/1/2023
Qualifications (if required): Horse racing Industry		
Board of Housing		
Representative Sheila Rice, Great Falls	Governor	1/1/2023
Qualifications (if required): Member informed and experienced in housing		
Representative Jeanette S. McKee, Hamilton	Governor	1/1/2023
Qualifications (if required): Member informed and experienced in housing		
Mr. Robert Leroy Gauthier, Ronan	Governor	1/1/2023
Qualifications (if required): Member informed and experienced in housing		
Ms. Tonya Plummer, Hays	Governor	1/1/2023
Qualifications (if required): Experience in housing, economics, or finance		
Board of Investments		
Mr. Karl Englund, Missoula	Governor	1/1/2023
Qualifications (if required): Attorney and will serve as Chair		
Ms. Diane Fladmo, Helena	Governor	1/1/2023
Qualifications (if required): Representative of Labor		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Investments Cont.		
Ms. Teresa Cohea, Helena	Governor	1/1/2023
Qualifications (if required): Representative of the Financial Community		
Mr. Bruce Nelson, Bozeman	Governor	1/1/2023
Qualifications (if required): Representative of agriculture		
Board of Livestock Loss		
Ms. Patricia Quisno, Harlem	Governor	1/1/2023
Qualifications (if required): Member actively involved in the livestock industry		
Ms. Karli Johnson, Choteau	Governor	1/1/2023
Qualifications (if required): Member actively involved in the livestock industry		
Board of Oil and Gas Conservation		
Mr. Paul Gatzemeier, Billings	Governor	1/1/2023
Qualifications (if required): Landowner residing in oil or gas producing counties but not involved in the industry		
Mr. Steven D. Durrett, Billings	Governor	1/1/2023
Qualifications (if required): Member from the oil and gas industry		
Mr. Joseph Michael Weber, Fairview	Governor	1/1/2023
Qualifications (if required): Attorney		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Pardons and Parole		
Mr. Scott Cruse, Helena	Governor	1/1/2023
Qualifications (if required): Extensive experience in the criminal justice system		
Mr. Brad Newman, Butte	Governor	1/1/2023
Qualifications (if required): Extensive experience in the criminal justice system		
Board of Personnel Appeals		
Mr. LeRoy Schramm, Helena	Governor	1/1/2023
Qualifications (if required): Substitute member having general labor-management experience		
Mr. Mario Valdez Martinez, Great Falls	Governor	1/1/2023
Qualifications (if required): Substitute member who is a full-time employee or elected official of a labor union		
Mr. Kevin William McRae, Helena	Governor	1/1/2023
Qualifications (if required): Management employee		
Ms. Katherine Mary Nordstrom, Billings	Governor	1/1/2023
Qualifications (if required): Substitute member who is a management employee		
Mr. Curtis Schomer, Billings	Governor	1/1/2023
Qualifications (if required): Labor Management experience		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Public Assistance		
Representative Carolyn Pease-Lopez, Billings	Governor	1/1/2023
Qualifications (if required): Public Representative		
Board of Respiratory Care Practitioners		
Mr. Justin Lyle O'Brien, Libby	Governor	1/1/2023
Qualifications (if required): Member of the public who is not a member of a health care profession		
Mr. William Glenn Carmichael, Great Falls	Governor	1/1/2023
Qualifications (if required): Respiratory Care Practitioner		
Coal Board		
Ms. Marianne Roose, Eureka	Governor	1/1/2023
Qualifications (if required): District 1, public administration		
Mr. Tim Schaff, Roundup	Governor	1/1/2023
Qualifications (if required): District 2, expertise in education		
Mrs. Veronica Small-Eastman, Lame Deer	Governor	1/1/2023
Qualifications (if required): District 2, expertise in education		
Commission on Human Rights		
Mr. Richard Bartos, Helena	Governor	1/1/2023
Qualifications (if required): Public member		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Commission on Human Rights Cont.		
Ms. Ann Brodsky, Helena	Governor	1/1/2023
Qualifications (if required): Public Representative		
Dr. Margarett H. Campbell, Havre	Governor	1/1/2023
Qualifications (if required): Public Representative		
Fish and Wildlife Commission		
Mr. Logan Brower, Scobey	Governor	1/1/2023
Qualifications (if required): District 4		
Mr. Andrew McKean, Glasgow	Governor	1/1/2023
Qualifications (if required): District 4		
Mr. Patrick Arthur Byorth, Bozeman	Governor	1/1/2023
Qualifications (if required): District 2		
Ms. Jana Waller, Florence	Governor	1/5/2023
Qualifications (if required): District 2		
Hard-Rock Mining Impact Board		
Ms. Donna von Nieda, Nye	Governor	1/1/2023
Qualifications (if required): District 1, impact area and elected school district trustee		
Ms. Jane Weber, Great Falls	Governor	1/1/2023
Qualifications (if required): District 2, elected county commissioner		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Judicial Nominations Commission		
Mr. Harold Glen Harper, Helena	Governor	1/1/2023
Qualifications (if required): Lay member who is neither a judge nor an attorney		
Board of Livestock Loss		
Mr. David McEwen, Galata	Governor	1/1/2023
Qualifications (if required): Member in the livestock industry with experience in wildlife		
Montana Arts Council		
Mr. Steve Zabel, Bozeman	Governor	1/31/2023
Qualifications (if required): None stated		
Montana Council on Developmental Disabilities		
Ms. Cindee Bianchini, Helena	Governor	1/1/2023
Qualifications (if required): Parent and family advocate		
Ms. Tara Lynn Thomas, Billings	Governor	1/1/2023
Qualifications (if required): Parent and family advocate		
Mrs. Constance Wethern, Glasgow	Governor	1/1/2023
Qualifications (if required): Parent and family advocate		
Montana Facility Finance Authority		
Mr. Paul James Komlosi, White Sulphur Springs	Governor	1/1/2023
Qualifications (if required): Public Representative		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Montana Facility Finance Authority Cont.		
Ms. Kimberly Rickard-Smeltzer, Townsend	Governor	1/1/2023
Qualifications (if required): Public Representative		
Mr. Matthew B. Thiel, Missoula	Governor	1/1/2023
Qualifications (if required): Attorney		
Montana Grass Conservation Commission		
Mr. Gregory Martin Oxarart, Malta	Governor	1/1/2023
Qualifications (if required): Officer of or member who serves on the board of directors of a state district		
Mr. Jeff Allen Willmore, Roy	Governor	1/1/2023
Qualifications (if required): Member who holds active grazing preference rights within a state district		
Montana Public Safety Officer Standards and Training Council		
Mr. Kevin Olson, Helena	Governor	1/1/2023
Qualifications (if required): Representative of the Department of Corrections		
Mr. Wyatt Arthur Glade, Miles City	Governor	1/1/2023
Qualifications (if required): Member of Crime Control		
Ms. Tia Rikel Robbin, Kalispell	Governor	1/1/2023
Qualifications (if required): Montana citizen at large		
Chief Ryan L. Oster, Hamilton	Governor	1/1/2023
Qualifications (if required): Chief of Police		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Montana Public Safety Officer Standards and Training Council Cont.		
Ms. Catherine Kristine Byron-White, Forsyth	Governor	1/1/2023
Qualifications (if required): County Attorney		
Mr. Jess Edwards, Browning	Governor	1/1/2023
Qualifications (if required): Montana certified tribal law enforcement representative		
Mr. Matthew Bruce Saylor, Butte	Governor	1/1/2023
Qualifications (if required): Local law enforcement officer		
Mr. Frederick James Sparks, Laurel	Governor	1/1/2023
Qualifications (if required): Detention Center Administrator		
Mr. Mike McCarthy, Helena	Governor	1/1/2023
Qualifications (if required): Citizen at-large experienced in law enforcement		
Mr. Mark Kraft, Sidney	Governor	1/1/2023
Qualifications (if required): Chief of Police		
Mr. Jim Anderson, Helena	Governor	1/1/2023
Qualifications (if required): Dept of Corrections Rep		
Montana Supreme Court Associate Justice		
Judge Ingrid Gayle Gustafson, Billings	Governor	1/1/2023
Qualifications (if required): None Stated		

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Montana Tax Appeal Board		
Ms. Valerie Balukas, Helena Qualifications (if required): Public Representative	Governor	1/1/2023
Mr. Eric Stern, Helena Qualifications (if required): Public Representative	Governor	1/1/2023
Motorcycle Safety Advisory Committee		
Sergeant Richard Dean Musson Jr., Bozeman Qualifications (if required): Peace Officer	Governor	1/1/2023
State Lottery Commission		
Mr. Leo Prigge, Butte Qualifications (if required): Certified Public Accountant	Governor	1/1/2023
State Parks and Recreation Board		
Mr. Rockwood Scott Brown, Billings Qualifications (if required): District 5 Member	Governor	1/1/2023
Ms. Mary Sheehy Moe, Great Falls Qualifications (if required): District 3 Member	Governor	1/1/2023
Ms. Liz Whiting, Great Falls Qualifications (if required): District 3 Rep	Governor	1/1/2023

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2023 THROUGH JANUARY 31, 2023

Board/Current Position Holder	Appointed By	Term End
Transportation Commission		
Mr. Noel Phillip Sansaver, Wolf Point	Governor	1/1/2023
Qualifications (if required): District 4, Democrat		
Ms. Tammi Fisher, Kalispell	Governor	1/1/2023
Qualifications (if required): District 1, Republican		
Traumatic Brain Injury Advisory Council		
Ms. Angela K. Grant, Arlee	Governor	1/1/2023
Qualifications (if required): Representative of injury control or prevention programs		
Ms. Ann Hansen Geiger, Anaconda	Governor	1/1/2023
Qualifications (if required): Advocate for Brain-injured persons		
Ms. Patricia Spencer, Clancy	Governor	1/1/2023
Qualifications (if required): Representative of injury control or prevention programs		
Unemployment Insurance Appeals Board		
Mr. Bruce Campbell, Helena	Governor	1/1/2023
Qualifications (if required): Member of the public who is not a state employee		
Ms. Jenny Iverson, Helena	Governor	1/1/2023
Qualifications (if required): Public member who is not a state employee		

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CHRISTI JACOBSEN
SECRETARY OF STATE

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